BLM Library
Denver Federal Center
Bldg. 85, OC-521
P.O. Box 25047
Denver, CO 80225

#1528579113

ID: 88081705

HD
216
.C573
nos.
2400-2450

BLM Library
Denver Federal Center
Bldg. 85, OC-521
P.O. Box 25047
Denver, CO 80225

Title 43—Public Land, Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER E—FOREST MANAGEMENT

[Circular No. 2400]

PART 5400—SALE OF FOREST PRODUCTS: GENERAL

Export of Timber From Federal Lands

1. Section 5400.0–5 is revised by revising paragraph (n) and by adding a new paragraph (o) as follows:

§ 5400.0–5 Definitions.

* * * * *

(n) "Substitution" means: (1) The purchase of a greater volume of Federal timber by an individual purchaser than has been his historic pattern within twelve (12) months of the sale of export by the same purchaser of a greater volume of his private timber than has been his historic pattern during the preceding twelve (12) months, exclusive of Federal timber purchased by negotiated sale for right-of-way purposes, and (2) The increase of both the purchase of Federal timber and export of timber from private lands tributary to the plant for which Bureau of Land Management timber covered by a specific contract is delivered or expected to be delivered.

(o) "Federal timber" means timber sold by the Bureau of Land Management as used under these regulations.

Dated: July 23, 1976.

CHRIS FARRAND,
Deputy Assistant Secretary of the Interior.

[FR Doc.76-21803 Filed 7-27-76;8:45 am]

Published in 41 F.R. 31381, July 28, 1976 - Effective August 1, 1976.

Circular Distribution List

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARATMENT OF THE INTERIOR

[Circular No. 2401]

PART 3300—OUTER CONTINENTAL SHELF LEASING; GENERAL

Qualified Joint Bidders

Accordingly, the first sentence of 43 CFR 3302.3-2(a) is hereby amended by the substitution of a comma for the period and by the addition of the following:

§ 3302.3-2 Joint bidding requirements.

(a) * * * and except that for the bidding period commencing May 1, 1976, all Statements of Production must be filed no later than August 13, 1976.

* * * * *

RONALD G. COLEMAN,
Assistant Secretary of the Interior.

AUGUST 4, 1976.

[FR Doc.76-22833 Filed 8-5-76;8:45]

Published in 41 F.R. 32891, August 6, 1976.

Circular Distribution List

GPO 836-869

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2402]

PART 3520—PREFERENCE RIGHT AND COMPETITIVE LEASES

PART 9230—TRESPASS

Mineral Leasing Regulations

1. Section 3520.2-2(a) is revised to read as follows:

§ 3520.2-2 Dating of Leases.

(a) Leases will be dated the first day of the month following the date signed by the lessor, except that upon receipt of a prior written request, a lease may be dated the first day of the month in which it is signed.

* * * * *

2. Section 3521.4-1 is revised to read as follows:

§ 3521.4-1 Preference right lease.

Mining operations carried on prior to the effective date of a lease shall constitute an act of trespass.

3. Section 9239.5-3(b) is amended to read as follows:

§ 9239.5-3 Coal.

* * * * *

(b) *Coal mined when there is no lease in effect.* Any mining of coal which is not pursuant to a coal lease in effect at the time of the mining shall constitute a trespass, and the coal so mined must be paid for on a trespass basis.

CHRIS FARRAND,
Deputy Assistant
Secretary of the Interior.

AUGUST 19, 1976.

[FR Doc.76-25029 Filed 8-25-76;8:45 am]

Published in 41 F.R. 36022, August 26, 1976 - Effective September 27, 1976.

Circular Distribution List

GPO 837-132

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER E—FOREST MANAGEMENT (5000)

[Circular No. 2403]

PART 5400—SALES OF FOREST PRODUCTS; GENERAL

Report Requirements for Other Than Advertised Sales

43 CFR Chapter II, Part 5400, is amended by revising § 5402.1 as follows:

§ 5402.1 Report requirements.

A report will be made to Congress on April 1, and October 1 of each year of negotiated timber sale contracts 250 M board feet and over made under paragraph (c) (1) and (2) of § 5402.0–6 during the period since the date of the last report. This report shall include name of purchaser; the appraisal value of the material involved; the amount of each contract; and description of the circumstances leading to the determination that the contract should be entered into by negotiation instead of competitive bidding after formal advertising.

CHRIS FARRAND,
Deputy Assistant Secretary of the Interior.

SEPTEMBER 9, 1976.

[FR Doc.76–26992 Filed 9–14–76;8:45 am]

Published in 41 F.R. 39324, September 15, 1976 - Effective October 15, 1976.

Circular Distribution List

GPO 837-479

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT

[Circular No. 2404]

PART 6220—PROTECTION AND PRESERVATION OF NATURAL VALUES

Management of Viable Coral Communities Located on the Outer Continental Shelf

1. The table of contents of Part 6220 is amended by adding a new Subpart 6224 as follows:

* * * * *

Subpart 6224—Viable Coral Communities

Sec.
6224.0–1 Purpose.
6224.0–3 Authority.
6224.0–5 Definitions.
6224.1 Permits.
6224.1–1 Requirements for a permit.
6224.1–2 Application for a permit.
6224.1–3 Action on an application for a permit.
6224.1–4 Operations pursuant to a permit.
6224.1–5 Suspensions of operations.
6224.1–6 Revocation of a permit.
6224.2 Bonding requirements.
6224.3 Fees.
6224.4 Exceptions.
6224.5 Penalties.

AUTHORITY: Sec. 5, Outer Continental Shelf Lands Act (67 Stat. 462; 43 U.S.C. 1334).

2. A new Subpart 6224 is added as follows:

Subpart 6224—Viable Coral Communities

§ 6224.0–1 Purpose.

The purpose of this subpart is to provide regulations relating to the protection and management of the viable coral communities located on the Outer Continental Shelf.

§ 6224.0–3 Authority.

Section 5 of the Outer Continental Shelf Lands Act (67 Stat. 462; 43 U.S.C. 1334), gives the Secretary authority to administer the provisions of that Act as they apply to the Outer Continental Shelf and to issue necessary rules and regulations to carry out that authority.

§ 6224.0–5 Definitions.

As used in this subpart, the term:

(a) "Viable Coral Community" means living coral and all dead coral formations and associated reef organisms that are part of a coral reef or other ecological community containing living corals.

(b) "Outer Continental Shelf" is defined in 43 U.S.C. 1331(a).

(c) "Authorized Officer" means any employee of the Bureau designated to perform the duties described in this subpart.

(d) "Bureau" means the Bureau of Land Management.

(e) "Person" means any individual, partnership, corporation, association, or other legal entity.

(f) "Proper Office" means the OCS office having jurisdiction of the area where the viable coral community that is the subject of interest is located.

§ 6224.1 Permits.

§ 6224.1–1 Requirement for a permit.

No person shall engage in any operation which directly causes damage or injury to a viable coral community that is located on the Outer Continental Shelf without having obtained a permit for said operations.

§ 6224.1–2 Application for a permit.

(a) Application for a permit shall be filed in the proper office of the Bureau.

(b) No specific form is required.

(c) Each application shall include:

(1) The name, legal mailing address and telephone number of each person intending to participate in the operations covered by the application.

(2) A description of the proposed area of the operations.

(3) A map or maps, such as a National Ocean Survey Map, with a scale of not less than 1:80,000 delineating the proposed area of operations.

(4) Information in detail describing the nature of the proposed operations and how the operation will be conducted.

(5) If coral specimens are to be taken, the purpose of such taking, the method of taking, the currents and their velocity in the area of taking, the depth of taking, the size, estimated dry weight, and type of coral to be taken, and the estimated fair market value of the coral to be taken..

(6) The approximate dates of commencement and termination of the operation.

(7) An affirmative statement that the operation will use methods that are designed to do minimum harm and disturbance to the viable coral community covered by a permit and those viable coral communities adjacent thereto. Also, an explanation of the procedures that will be taken to assure protection of said viable coral communities during said operation.

§ 6224.1–3 Action on an application for a permit.

(a) Within 60 days of receipt of the application for a permit, the application will be reviewed and the applicant will be:

(1) Notified in writing that the application is approved and a permit issued or is disapproved and a permit denied and the reasons therefor; or

(2) Notified in writing of any changes in, or additions to, the application deemed necessary by the authorized officer to meet the purpose of the regulations of this subpart, or;

(3) Notified in writing that the application is being reviewed, but that more

Published in 41 F.R. 39749, September 16, 1976 - Effective September 30, 1976.

Circular Distribution List

time, not to exceed an additional 60 days, is necessary to complete the review, setting forth the reasons why additional time is necessary.

(b) A permit shall be granted for a period not to exceed 12 months and shall terminate on the expiration date shown therein unless extended by the authorized officer. One extension of not to exceed 12 months may be granted by the authorized officer.

(c) The rejection of an application for a permit and denial of said permit shall be subject to a right of appeal in accordance with 43 CFR Part 4, Subpart E.

§ 6224.1–4 Operations pursuant to a permit.

(a) Any and all operations carried out pursuant to a permit granted pursuant to the provisions of this subpart shall be conducted in accordance with the terms of the permit.

(b) At any time during operations conducted under a permit issued pursuant to this subpart, the authorized officer may require a change in the operations in order to minimize unforeseen disturbance or harm to a viable coral community. The reason for such change shall be furnished the permittee in writing. If the permittee does not make the changes required by the authorized officer, appropriate action, including the suspension of operations, will be initiated to assure compliance with these regulations and protection of the viable coral community.

(c) The decision of the authorized officer to require a change in the operations of a permittee is subject to appeal in accordance with 43 CFR Part 4, subpart E.

§ 6224.1–5 Suspension of operations.

If the authorized officer determines that the operations conducted by a permittee on a viable coral community pursuant to a permit are not being conducted in accordance with the provisions of the permit or of this subpart, he may after notification to the permittee, order an immediate suspension in operations.

§ 6224.1–6 Revocation of a permit.

A permit may be revoked if the permittee fails to comply with any of the provisions of the permit or of this subpart. No permit shall be revoked until the permittee has been notified in writing, in person, or at the address required by Section 6224.1–2 hereof. Said revocation shall be effective upon delivery. A revocation is subject to appeal in accordance with 43 CFR Part 4, subpart E.

§ 6224.2 Bonding requirements.

(a) The applicant, prior to the issuance of a permit, shall furnish a bond in an amount to be determined by the authorized officer conditioned upon compliance with the terms of the permit. The authorized officer may require additional security in the form of a supplemental bond or bonds or an increase in the coverage of an existing bond, if, after the commencement of operations, such additional coverage is deemed necessary.

(b) In lieu of a bond, the applicant may deposit and maintain in a Federal depository, as directed by the authorized officer, cash in amount equal to the required dollar amount of the bond or negotiable securities of the United States having market value at the time of deposit of not less than the required dollar amount of the bond.

(c) When operations have been completed, the permittee shall notify the authorized officer, and the authorized officer shall, if satisfied that the permittee has performed in compliance with the provisions of the permit and this subpart, release the bond.

(d) The authorized officer may waive the requirement for a bond on a permit issued to a State and its political subdivisions and bona fide non-profit research organizations.

§ 6224.3 Fees.

(a) Each application shall be accompanied by a $25.00 non-refundable filing fee.

(b) In the case of permits for commercial purposes, the authorized officer may set a fee based on the estimated fair market value of the coral taken from the viable coral community for commercial purposes, but in no event shall said fee be less than 5 percent of said estimated fair market value.

§ 6224.4 Exceptions.

The regulations of this subpart shall not apply to emergency activities taken to save human lives or property jeopardized at sea.

§ 6224.5 Penalties.

Any person who knowingly and willingly violates the regulations of this subpart shall be guilty of a misdemeanor and punishable by a fine of not more than $2,000 or by imprisonment for not more than six months, or by both such fine and imprisonment. Each day of violation shall be deemed a separate offense.

Signed at Washington, D.C., on September 10, 1976.

CHRIS FARRAND,
Deputy Assistant Secretary of the Interior.

[FR Doc.76–27063 Filed 2–15–76;8:45 am]

GPO 837-480

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT

[Circular No. 2404]

Legal Library
Technical Service

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
1976 NOV -3 AM 10: 00
RECEIVED
MONTANA STATE OFFICE

PART 6220—PROTECTION AND PRESERVATION OF NATURAL VALUES

Management of Viable Coral Communities Located on the Outer Continental Shelf

1. The table of contents of Part 6220 is amended by adding a new Subpart 6224 as follows:

* * * * *

Subpart 6224—Viable Coral Communities

Sec.
6224.0–1 Purpose.
6224.0–3 Authority.
6224.0–5 Definitions.
6224.1 Permits.
6224.1–1 Requirements for a permit.
6224.1–2 Application for a permit.
6224.1–3 Action on an application for a permit.
6224.1–4 Operations pursuant to a permit.
6224.1–5 Suspensions of operations.
6224.1–6 Revocation of a permit.
6224.2 Bonding requirements.
6224.3 Fees.
6224.4 Exceptions.
6224.5 Penalties.

AUTHORITY: Sec. 5, Outer Continental Shelf Lands Act (67 Stat. 462; 43 U.S.C. 1334).

2. A new Subpart 6224 is added as follows:

Subpart 6224—Viable Coral Communities

§ 6224.0–1 Purpose.

The purpose of this subpart is to provide regulations relating to the protection and management of the viable coral communities located on the Outer Continental Shelf.

§ 6224.0–3 Authority.

Section 5 of the Outer Continental Shelf Lands Act (67 Stat. 462; 43 U.S.C. 1334), gives the Secretary authority to administer the provisions of that Act as they apply to the Outer Continental Shelf and to issue necessary rules and regulations to carry out that authority.

§ 6224.0–5 Definitions.

As used in this subpart, the term:

(a) "Viable Coral Community" means living coral and all dead coral formations and associated reef organisms that are part of a coral reef or other ecological community containing living corals.

(b) "Outer Continental Shelf" is defined in 43 U.S.C. 1331(a).

(c) "Authorized Officer" means any employee of the Bureau designated to perform the duties described in this subpart.

(d) "Bureau" means the Bureau of Land Management.

(e) "Person" means any individual, partnership, corporation, association, or other legal entity.

(f) "Proper Office" means the OCS office having jurisdiction of the area where the viable coral community that is the subject of interest is located.

§ 6224.1 Permits.

§ 6224.1–1 Requirement for a permit.

No person shall engage in any operation which directly causes damage or injury to a viable coral community that is located on the Outer Continental Shelf without having obtained a permit for said operations.

§ 6224.1–2 Application for a permit.

(a) Application for a permit shall be filed in the proper office of the Bureau.

(b) No specific form is required.

(c) Each application shall include:

(1) The name, legal mailing address and telephone number of each person intending to participate in the operations covered by the application.

(2) A description of the proposed area of the operations.

(3) A map or maps, such as a National Ocean Survey Map, with a scale of not less than 1:80,000 delineating the proposed area of operations.

(4) Information in detail describing the nature of the proposed operations and how the operation will be conducted.

(5) If coral specimens are to be taken, the purpose of such taking, the method of taking, the currents and their velocity in the area of taking, the depth of taking, the size, estimated dry weight, and type of coral to be taken, and the estimated fair market value of the coral to be taken..

(6) The approximate dates of commencement and termination of the operation.

(7) An affirmative statement that the operation will use methods that are designed to do minimum harm and disturbance to the viable coral community covered by a permit and those viable coral communities adjacent thereto. Also, an explanation of the procedures that will be taken to assure protection of said viable coral communities during said operation.

§ 6224.1–3 Action on an application for a permit.

(a) Within 60 days of receipt of the application for a permit, the application will be reviewed and the applicant will be:

(1) Notified in writing that the application is approved and a permit issued or is disapproved and a permit denied and the reasons therefor; or

(2) Notified in writing of any changes in, or additions to, the application deemed necessary by the authorized officer to meet the purpose of the regulations of this subpart, or;

(3) Notified in writing that the application is being reviewed, but that more

Published in 41 F.R. 39749, September 16, 1976 - Effective September 30, 1976.

Circular Distribution List

time, not to exceed an additional 60 days, is necessary to complete the review, setting forth the reasons why additional time is necessary.

(b) A permit shall be granted for a period not to exceed 12 months and shall terminate on the expiration date shown therein unless extended by the authorized officer. One extension of not to exceed 12 months may be granted by the authorized officer.

(c) The rejection of an application for a permit and denial of said permit shall be subject to a right of appeal in accordance with 43 CFR Part 4, Subpart E.

§ 6224.1–4 Operations pursuant to a permit.

(a) Any and all operations carried out pursuant to a permit granted pursuant to the provisions of this subpart shall be conducted in accordance with the terms of the permit.

(b) At any time during operations conducted under a permit issued pursuant to this subpart, the authorized officer may require a change in the operations in order to minimize unforeseen disturbance or harm to a viable coral community. The reason for such change shall be furnished the permittee in writing. If the permittee does not make the changes required by the authorized officer, appropriate action, including the suspension of operations, will be initiated to assure compliance with these regulations and protection of the viable coral community.

(c) The decision of the authorized officer to require a change in the operations of a permittee is subject to appeal in accordance with 43 CFR Part 4, subpart E.

§ 6224.1–5 Suspension of operations.

If the authorized officer determines that the operations conducted by a permittee on a viable coral community pursuant to a permit are not being conducted in accordance with the provisions of the permit or of this subpart, he may after notification to the permittee, order an immediate suspension in operations.

§ 6224.1–6 Revocation of a permit.

A permit may be revoked if the permittee fails to comply with any of the provisions of the permit or of this subpart. No permit shall be revoked until the permittee has been notified in writing, in person, or at the address required by Section 6224.1–2 hereof. Said revocation shall be effective upon delivery. A revocation is subject to appeal in accordance with 43 CFR Part 4, subpart E.

§ 6224.2 Bonding requirements.

(a) The applicant, prior to the issuance of a permit, shall furnish a bond in an amount to be determined by the authorized officer conditioned upon compliance with the terms of the permit. The authorized officer may require additional security in the form of a supplemental bond or bonds or an increase in the coverage of an existing bond, if, after the commencement of operations, such additional coverage is deemed necessary.

(b) In lieu of a bond, the applicant may deposit and maintain in a Federal depository, as directed by the authorized officer, cash in amount equal to the required dollar amount of the bond or negotiable securities of the United States having market value at the time of deposit of not less than the required dollar amount of the bond.

(c) When operations have been completed, the permittee shall notify the authorized officer, and the authorized officer shall, if satisfied that the permittee has performed in compliance with the provisions of the permit and this subpart, release the bond.

(d) The authorized officer may waive the requirement for a bond on a permit issued to a State and its political subdivisions and bona fide non-profit research organizations.

§ 6224.3 Fees.

(a) Each application shall be accompanied by a $25.00 non-refundable filing fee.

(b) In the case of permits for commercial purposes, the authorized officer may set a fee based on the estimated fair market value of the coral taken from the viable coral community for commercial purposes, but in no event shall said fee be less than 5 percent of said estimated fair market value.

§ 6224.4 Exceptions.

The regulations of this subpart shall not apply to emergency activities taken to save human lives or property jeopardized at sea.

§ 6224.5 Penalties.

Any person who knowingly and willingly violates the regulations of this subpart shall be guilty of a misdemeanor and punishable by a fine of not more than $2,000 or by imprisonment for not more than six months, or by both such fine and imprisonment. Each day of violation shall be deemed a separate offense.

Signed at Washington, D.C., on September 10, 1976.

CHRIS FARRAND,
Deputy Assistant Secretary of the Interior.

[FR Doc.76–27063 Filed 2–15–76;8:45 am]

GPO 837-480

contractor shall immediately give written notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

37. EMPLOYMENT OF THE HANDICAPPED

(Text of this clause is set forth in FPR 1-1.1304-1)

38. STANDARDS OF WORK

The Contractor agrees that the performance of work and services pursuant to the requirements of this contract shall conform to high professional standards.

39. COMPETITION IN SUBCONTRACTING

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum extent consistent with the objectives and requirements of the contract.

40. CLEAN AIR AND WATER

(Text of this clause is set forth in FPR 1-1.2302-2.)

2. In Subpart 3-16.50, Forms for Negotiated Procurements § 3-16.5002-4, General Provisions, is deleted and the following is substituted therefor:

§ 3-16.5002-4 General provisions.

The appropriate General Provisions shall be incorporated by the contracting officer in all contracts to which this Subpart 3-16.50 applies:

(a) Form HEW-314 (Rev. 9/76) General Provisions (Negotiated Fixed Price Research and Development Contract). (Note: This form with the deletion of Clause 17, "Patent Rights" should also be used in other types of nonpersonal service contracts, e.g., studies, surveys, and demonstrations in socio-economic areas.)

(b) Form HEW-315 (Rev. 7/76) General Provisions (Negotiated Cost-Reimbursement Contract with Educational Institutions).

(c) Form HEW-315A (Rev. 7/76) General Provisions (Negotiated Cost-Reimbursement Contract With Nonprofit Institutions Other Than Educational Institutions).

(d) Form HEW-316 (Rev. 7/76) General Provisions (Negotiated Cost-Plus-Fixed Fee Contract).

[FR Doc.76-28164 Filed 9-24-76;8:45 am]

Title 43—Public Lands: Interior

SUBTITLE A—OFFICE OF THE SECRETARY OF THE INTERIOR

[Circular No. 2405]

PART 25—JOHNNY HORIZON—USE OF NAME AND SYMBOL

Deletion of Part

The purpose of this amendment is to delete from the regulations 43 CFR Part 25—Johnny Horizon—Use of Name and Symbol. This regulation implemented the act of September 25, 1970 (84 Stat. 870; 18 U.S.C. 714).

The Johnny Horizon program was begun almost eight years ago to enlist the public in a clean-up of trash and litter on the public lands. The program grew and in this bicentennial year bore the title of Johnny Horizon '76 with the motto "Let's Clean Up America for Our 200th Birthday". The Johnny Horizon program has done its job well and has served its period of usefulness.

It is the policy of the Department of the Interior to give notice of proposed rulemaking and to invite the public to participate in rulemaking except where such participation would be impracticable, unnecessary, or contrary to the public interest and a specific finding to this effect is published with the rules or regulations (36 FR 8336, May 4, 1971). Public participation is unnecessary in this case since the rulemaking simply removes from the regulations provisions relating to a program which has been terminated by the Department.

This rulemaking does not exceed the criteria for preparing an Inflation Impact Statement.

Therefore, Part 25 of CFR is deleted from the Code of Federal Regulations effective September 30, 1976.

JOHN KYL,
Acting Secretary of the Interior.

SEPTEMBER 17, 1976.

[FR Doc.76-28137 Filed 9-24-76;8:45 am]

CHAPTER I—BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

PART 419—ADMINISTRATIVE CLAIMS

Processing Claims for Loss or Damage; Failure of Teton Dam

On July 14, 1976 final regulations were published in the FEDERAL REGISTER (41 FR 29084) governing the processing of claims for actual damages to or loss of property, income, personal injury or for death directly resulting from the failure on June 5, 1976, of Teton Dam of the Lower Teton Division of the Teton Basin Federal Reclamation Project. The regulations were intended to provide payment to the victims of the tragic flood as soon as possible. Interested persons were given 30 days to comment to the Commissioner, Bureau of Reclamation. In addition, the Secretary of the Interior reserved the right to modify the regulations from time to time. Such a modification was made by the Secretary on August 3, 1976 (41 FR 32427). The regulations were revised to provide that: (1) An additional claim may be submitted if the claimant had not discovered and by the exercise of reasonable diligence could not have discovered the damage or injury prior to the authorized officer's determination of the claimant's single original claim; (2) the claimant need not refund or repay amounts received as partial or emergency payments if the claim is withdrawn; (3) if the claimant is unwilling to release the United States, its agents and employees from liability for damages caused by the incident, the claimant may elect to accept payment of 50 percent of the amount determined by the authorized officer without signing a release; and (4) interest on commercial loans incurred because of the incident could be claimed.

The 30-day comment period expired on August 16, 1976. Comments were received from members of the Idaho Congressional delegation, the Veterans Administration, the Department of Justice, and two Idaho law firms. Several comments were received regarding the qualifications for filing an Appropriation Act claim. First, § 419.1-0(a) was criticized because it requires that all claims be accompanied by a request for money damages in a sum certain. The suggestion was made that claims for indeterminable amounts should be allowed, especially in cases of crop losses which are uncertain before the end of the growing season. This suggestion was not adopted because the present regulations allow amendment of claims and the submission of an additional claim when injury or damage is not reasonably discoverable prior to final determination of a claimant's original claim. The claimant also may include in the original claim an estimate of potential loss which might be suffered.

Second, it was suggested that the holder of a secured interest in property ought to be permitted to file a claim for the property. This suggestion was prompted by concern that some property owners with little actual interest in the property may fail to file their claim. The holder of the secured interest, who had a greater actual interest in the property, would be left without security. This suggested change could result in conflicting claims for the same property by holders of secured interests and owners. Such conflicting claims would involve the Government in private financial disputes. The regulations currently protect known holders of secured interests by providing for notice prior to payment to the claimant. For these reasons, this suggested change has not been adopted.

While these comments were being considered, Congress enacted the Teton Dam Disaster Assistance Act of 1976 on August 25, 1976. President Ford signed the bill on September 7, 1976, Pub. L. 94-400, 90 Stat. 1211. This legislation necessitated additional changes in the regulations. The purpose of the Teton Dam Disaster Assistance Act of 1976 is to settle claims for death, personal injury and property damage resulting from the failure of Teton Dam. Congress believed that in spite of the authority and funding providing for the payment of claims by the Public Works Appropriation Act, Pub. L. 94-355, 90 Stat. 889, specific new authorizing legislation was more comprehensive. The Teton Dam Disaster Assistance Act provides a definite procedure for compensation. The basic structure of the regulations issued under the Public Works Appropriations Act has been retained. However, the regulations are now based on the specific requirements of the Teton Dam Disaster Assistance Act. Publication of these revised regulations shall constitute final regulations and procedures for the handling of claims as required by section 5 of the Teton Dam Disaster Assistance Act, Pub. L. 94-400, 90 Stat. 1211.

In response to these comments, suggestions made by field personnel of the Bureau of Reclamation, further consideration of the regulations, and the provisions of the Teton Dam Disaster Assistance Act of 1976, the following changes have been made in the regulations:

1. A definition of "actual pecuniary loss" has been added to § 419.0-5 in order to clarify § 419.9 of the regulations

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT

1976 DEC -9 AM 10: 00

RECEIVED
MONTANA STATE OFFICE
BILLINGS, MONTANA

Legal Library

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2406]

PART 3100—OIL AND GAS LEASING

PART 3130—FRACTIONAL OR FUTURE INTEREST LEASES AND PERMITS

Fractional Present Interest

1. Section 3103.3–3 is amended as follows:

§ 3103.3–3 Fractional interests.

Rentals, minimum royalties and royalties payable for lands in which the United States owns an undivided fractional interest shall be payable as provided in Subpart 3130 of this chapter.

2. The table of sections for Part 3130 is amended as follows:

Subpart 3130—Fractional or Future Interest Leases and Permits

Sec.
3130.1 Competitive and noncompetitive.
3130.2 Rental and royalties.
3130.2–1 Rental.
3130.2–2 Royalties and minimum royalties.
3130.3 Public domain.
3130.3–1 Fractional interest offers.
3130.4 Acquired lands.
3130.4–1 General statement.
3130.4–2 Consent of agency and stipulations required
3130.4–3 Forms.
3130.4–4 Fractional present interests.
3130.4–5 Future and fractional interest offers.

3. Section 3130.2 is revised as follows:

§ 3130.2 Rental and royalties.

§ 3130.2–1 Rental.

Rental shall not be prorated for any lands in which the United States owns an undivided fractional interest but shall be payable at the same rate as provided in Subpart 3103 of this chapter for the full acreage in such lands.

§ 3130.2–2 Royalties and minimum royalties.

Minimum royalties shall not be prorated for any lands in which the United States owns an undivided fractional interest but shall be payable at the same rate as provided in Subpart 3103.3–5 of this chapter for the full acreage in such lands. Royalty on production shall be payable in the same proportion to royalties provided in Subpart 3103 of this chapter as the undivided fractional interest of the United States in the oil and gas underlying the leased lands is to the full mineral interest.

4. Section 3130.3 is amended as follows:

§ 3130.3 Public domain.

§ 3130.3–1 Fractional interest offers.

An offer for a fractional present interest noncompetitive oil and gas lease must be filed on a form approved by the Director in accordance with Subpart 3111 of this chapter.

5. Section 3130.4 is amended as follows:

§ 3130.4 Acquired lands.

§ 3130.4–4 Fractional present interest.

An offer for a fractional present interest noncompetitive lease must be filed on a form approved by the Director in accordance with Subpart 3111 of this chapter.

CHRIS FARRAND,
Deputy Assistant Secretary of the Interior.

SEPTEMBER 22, 1976.

[FR Doc.76–28593 Filed 9–29–76;8:45 am]

Published in 41 F.R. 43149, September 30, 1976 - Effective October 28, 1976.

Circular Distribution List

GPO 837-997

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT

1975 DEC -9 AM 10:00

RECEIVED
MONTANA STATE OFFICE
BILLINGS, MONTANA

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2407]

PART 3520—PREFERENCE RIGHT AND COMPETITIVE LEASES

Prospecting Permits; Issuance of Leases

§ 3521.1–1 [Amended]

43 CFR § 3521.1–1(a)(2) is hereby amended by deleting the figure "60" and inserting the figure "180".

CHRIS FARRAND,
Deputy Assistant Secretary of the Interior.

SEPTEMBER 29, 1976.

[FR Doc.76–28914 Filed 9–29–76;10:13 am]

Published in 41 F.R. 43149, September 30, 1976.

Circular Distribution List

GPO 837-998

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2408]

PART 3100—OIL AND GAS LEASING

Bond Requirements

1. The table of contents for Subpart 3104 is amended as follows:

Sections 3104.0–5 through and including § 3104.8 are revised to read as follows:

Subpart 3104—Bonds

Sec.	
3104.0–5	Definitions.
3104.1	Types of bonds.
3104.2	Types of coverage.
3104.3	Statewide and Nationwide bonds.
3104.4	Amount of bonds.
3104.5	Where filed and number of copies.
3104.6	Form of bonds.
3104.7	Default.
3104.8	Termination of period of liability.
3104.9	Exploration bond.
3104.9–4	Riders to existing bond forms.
3104.9–5	Termination of period of liability.

AUTHORITY: Mineral Leasing Act of February 25, 1920 (41 Stat. 437), as amended and supplemented (30 U.S.C. 181–287) and the Mineral Leasing Act for Acquired Lands of August 7, 1947 (30 U.S.C. 351–357).

Subpart 3104—Bonds

§ 3104.0–5 Definitions.

For the purpose of this subpart: (a) "Operator" means the person authorized under the operating agreement approved by the Department to conduct operations on the leased land as specified in such agreement.

(b) "Unit Operator" means the person authorized under the unit agreement approved by the Department to conduct operations on unitized lands as specified in such agreement.

2. Sections 3104.1 through 3104.8 are revised to read as follows:

§ 3104.1 Types of bonds.

Bonds under this subpart must be either surety bonds or personal bonds.

(a) *Surety bond.* Surety bonds must be issued by qualified surety companies approved by the Treasury Department (see Department of the Treasury Circular 570, as revised periodically in the FEDERAL REGISTER).

(b) *Personal bond.* Personal bonds must be accompanied by a deposit as security therefor of negotiable Treasury bonds of the United States or cash of a value equal to the amount specified in the bond. Negotiable Treasury bonds must be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of the lease.

§ 3104.2 Types of coverage.

(a) *General lease and drilling bond.* A general lease and drilling bond in the amount of not less than $10,000, conditioned upon compliance with all the terms and conditions of the lease must be furnished prior to entry and commencement of geophysical exploration or drilling operations by the lessee or his operator.

(b) *Operator's bond.* An operator's bond in the amount of not less than $10,000, conditioned upon compliance with all the terms and conditions of the lease, may be furnished in lieu of a general lease and drilling bond. Where there are two or more operators having interests in different formations or portions of the lease, each operator may file an operator's bond in his own name as principal on the bond in lieu of the general lease and drilling bond. In any event, every operator shall be covered by either a general lease and drilling bond or an operator's bond.

(c) *Unit operator's bond.* The approved unit operator may furnish and maintain a unit operator's bond conditioned upon faithful performance of the duties and obligations of the agreement and the terms and conditions of every lease subject thereto in lieu of a separate general lease and drilling bond or operator's bond for each lease committed to the unit agreement. All unit operator's bonds must be furnished upon request and in at least the amount recommended by the Area Oil and Gas Supervisor. (See 30 CFR § 226.15 for form of Unit Operator's bond.)

(d) *Bond for the protection of the surface owner.* Separate bonds for the protection of surface owners are no longer required. Adequate protection of surface owners is provided by bonds required from either the lessees, operators, or unit operators.

§ 3104.3 Statewide and Nationwide bonds.

(a) *Statewide bond.* In lieu of general lease and drilling bonds and operator's bonds, holders of leases or approved operating agreements, may furnish a bond in the amount of at least $25,000 covering all leases and operations in any one State under either the Mineral Leasing Act of 1920 or the Mineral Leasing Act for Acquired Land of 1947. Operators functioning under both Acts will be required to furnish separate bonds.

(b) *Nationwide bond.* In lieu of general lease and drilling bonds, operator's bonds, or statewide bonds, holders of leases or approved operating agreements may furnish a bond in the amount of at least $150,000 covering all leases or operations nationwide under both the Mineral Leasing Act of 1920 and the Mineral Leasing Act for Acquired Lands of 1947.

§ 3104.4 Increased amount of bonds.

The authorized officer, on his own motion or upon the recommendation of the Area Oil and Gas Supervisor, may elect to increase the amount of any bonds required under this Subpart 3104 when additional coverage is determined appropriate.

§ 3104.5 Where filed and number of copies.

All bonds must be filed in the proper office (See Part 1820). A single copy executed by the principal and, in the case of surety bonds, by both the principal and an acceptable surety is sufficient.

§ 3104.6 Form of bonds.

All bonds must be furnished on forms approved by the Director.

§ 3104.7 Default.

(a) *Payment by surety.* Where, upon a default, the surety makes payment to the Government of any obligation incurred under a lease, the face amount of the surety bond or personal bond and the surety's liability thereunder shall be reduced by the amount of such payment.

(b) *Penalty.* After default, upon penalty of cancellation of all of the leases covered by such bond, that principal shall post a new bond in the amount previously held by the Government, within 6 months after notice, or within such shorter period as the authorized officer of the Bureau of Land Management may fix. However, in lieu thereof, the principal may within that time file separate or substitute bonds for each lease or operating agreement. Where a bond is furnished by an operator or unit operator, suit may be brought thereon without joining the lessee when not a party to the bond.

§ 3104.8 Termination of period of liability.

The authorized officer will not give consent to termination of the period of liability of any bond unless an acceptable alternative bond has been filed or until all the terms and conditions of the lease have been met.

CHRIS FARRAND,
Deputy Assistant Secretary of the Interior.

OCTOBER 8, 1976.

[FR Doc.76–30193 Filed 10–14–76;8:45 am]

Published in 41 F.R. 45566, October 15, 1976 - Effective November 16, 1976.

Circular Distribution List

GPO 837-999

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2409]

PART 2800—RIGHTS-OF-WAY

Principles and Procedures Terms and Conditions

§ 2801.1–5 Terms and conditions.

* * * * *

(f) To pay to theUnited Statesthe

(f) To pay to the United States the full value for all damages to the lands or other property of the United States caused by him or by his employees, contractors, or employees of the contractors, and to indemnify the United States against any liability for damages to life, person or property arising from the occupancy or use of the lands under the right-of-way; except that where a right-of-way is granted hereunder to a state or other governmental agency whose power to assume liability by agreement is limited by law, such agency shall indemnify the United States as provided above to the extent that it may legally do so.

CHRIS FARRAND,
Deputy Assistant Secretary of the Interior.

OCTOBER 20, 1976.

[FR Doc.76-31504 Filed 10-27-76;8:45 am]

Published in 41 F.R. 47252, October 28, 1976 - Effective November 29, 1976.

Circular Distribution List

GPO 838-237

TITLE 43 PUBLIC LANDS INTERIOR

CHAPTER II BUREAU OF LAND MANAGEMENT
DEPARTMENT OF THE INTERIOR

Subchapter c: Minerals Management

CIRCULAR NO. 2410

Part 3100 OIL AND GAS LEASING

FEES AND RENTALS

§ 3103.2-1 General statement.

(b) *Transfers.* An application for approval of any instrument of transfer of a lease or interest therein or a filing of any such instrument under § 3106.4 must be accompanied by a fee of $25, except that applications for transfer of a royalty interest must be accompanied by a fee of $10, and an application not accompanied by payment of such a fee will not be accepted for filing by the authorizing officer. Such fee will not be returned even though the application later be withdrawn or rejected in whole or in part.

[35 FR 9680, June 13, 1970, as amended at 42 FR 1032, Jan. 5, 1977]

§ 3103.3-2 Advance rental payments.

Rentals shall be payable in advance at the following rates:

(a) On noncompetitive leases issued on and after February 1, 1977, under section 17 of the act for lands which on the day on which the rental falls due lie wholly outside of the known geologic structure of a producing oil or gas field, or on which on the day on which the rental falls due the thirty days' notice period under paragraph (b)(1) of this section has not yet expired, an annual rental of $1 per acre or fraction thereof for each lease year.

§ 3106.2-1 Where filed and filing fee.

An application for approval of any instrument of transfer of a lease of interest therein or a filing of any such instrument under § 3106.4 must be filed in the proper office and accompanied by a fee of $25, except that applications for transfer of a royalty interest must be accompanied by a fee of $10. An application not accompanied by payment of such a fee will not be accepted for filing by the authorizing officer. Such fee will not be returned even though the application later be withdrawn or rejected in whole or in part.

[42 FR 1033, Jan. 5, 1977]

National Flood Insurance Program, the Town must adopt flood plain management measures that are consistent with the criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.3, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at Town Office Building, Yarmouth, Massachusetts 02664.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary
Nantucket Sound	Columbus Ave	10	170 ft from intersection with West Rd.
	Crowes Purchase Rd	10	1,140 ft from intersection with Sea Ave.
	Canary Lane	10	250 ft from intersection with Lake Rd.
Cape Cod	Lone Tree Rd	10.5	560 ft from intersection with Thacher Shore Rd.
	Old Salt Ketch Lane	10	470 ft from intersection with Center St.
	Whipporwill Lane	10	260 ft from intersection with Gaslight Dr.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 23, 1968), as amended (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: October 18, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-33308 Filed 11-12-76;8:45 am]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2411]

PART 3720—PUBLIC LAW 357; GENERAL

Entry and Location of Source Material Upon Public Lands Valuable for Coal

The Act of August 11, 1955 (30 U.S.C. 541–541l), provided for entry and location, on discovery of a valuable source material, upon public lands of the United States classified as or known to be valuable for coal and for other purposes.

These lands were withdrawn from all forms of entry as of August 11, 1975, pursuant to section 10 of the Act. This withdrawal terminated all activity under the Act except for requirements of the annual report and payment to be made by a claimant to the U.S. Geological Survey, which will still be operative.

In addition, all claims made under the Act expired on August 11, 1975, except those on which patent had been issued or application for patent had been made. We are unaware of any pending applications for patent.

Therefore 43 CFR 3720 is hereby amended by deleting subparts 3720, 3721, 3723, and 3724.

CHRIS FARRAND,
Deputy Assistant Secretary of the Interior.

NOVEMBER 9, 1976.

[FR Doc.76-33579 Filed 11-12-76;8:45 am]

Title 46—Shipping

CHAPTER II—MARITIME ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 206—MISCELLANEOUS FEES

PART 207—STATISTICAL DATA FOR USE IN OPERATING-DIFFERENTIAL SUBSIDY APPLICATION HEARINGS

Revision and Adoption of Regulations

On April 28, 1976, a document was published in the FEDERAL REGISTER (41 FR 17750) proposing to revise the rules on production of statistical data and reports. A revised Part 206 of Title 46 of the Code of Federal Regulations would be applicable only to requests for the production of statistical data and reports other than those required by the Maritime Subsidy Board (Board) in connection with hearings under section 605(c), Merchant Marine Act, 1936, as amended (Act). A new Part 207 of Title 46 of the Code of Federal Regulations would be applicable to statistical data and reports required by the Board in hearings under section 605(c) of the Act.

Public comments were received from two parties, one a private attorney respected in the field of administrative and maritime law and the other a bar association whose membership specializes in maritime law. All comments were given due consideration and most are discussed below.

Before addressing the public comments, it is deemed useful to explain the basic purposes of the proposed rulemaking. The Board recognized the extended delays in production of necessary data and reports in connection with hearings under section 605(c) of the Act. The cause of said delays was the practice of individual programming of automated data tailored to the requirements of a given hearing. The solution developed was to standardize the statistical data and reports and to maximize use of automatic data processing as opposed to manual compilation. Development of the standardized data was based upon analysis of data produced in past hearings under section 605(c) of the Act. Permanent programs have been written for the automated data equipment in service at the Maritime Administration. It is anticipated that production of the statistical data and reports will be accomplished within thirty (30) days of the referral of an operating-differential subsidy (ODS) application to hearing under section 605 (c) of the Act. It was deemed more convenient to the public to separate the subject of statistical data and reports for hearings under section 605(c) of the Act from the subject of other requests for statistical data and reports.

The private attorney offering comments urges adoption of the new Part 207, and remarks on two matters collateral thereto. No comment is offered with respect to the revised Part 206.

The first collateral comment is that production of statistics for use in hearings under section 605(c) of the Act was too slow. As noted above, the primary purpose of the proposal is to overcome this shortcoming.

The second collateral comment addresses the compatibility of statistics prepared by diverse Federal agencies. Within available resources, the Maritime Administration will continue to study this situation to determine whether a feasible solution exists for the apparent inconsistencies. In any event, the instant rulemaking proceeding is not the proper vehicle for resolution of that question.

The specialized bar association offers a variety of comments, most of which are devoted to the new Part 207. Most such comments, and all those of major substance, are discussed in the following eleven paragraphs.

1. A "reservation" is expressed as to the claimed exemption from the rulemaking provisions of 5 U.S.C. 553, followed by the factual statement that those procedural requirements have been observed. The matter is moot and needs no explication.

2. Concern is expressed that the charges listed in the revised Part 206 be no greater than those levied by other Federal agencies. The charges will cover the production costs incurred and will be in line with charges throughout the Department of Commerce. Periodic reviews will be undertaken to assure this remains the case. Indeed, since publication of the Notice of Proposed Rulemaking, a review has been completed which requires increases in two of the charges; namely, Programmer/Analyst Man-Hour Regular Time increases from $14.28 to $22.80 and Statistician/Analyst Man-Hour Regular Time increases from $13.50 to $17.35.

The following paragraphs pertain to the proposed new Part 207.

DO NOT REMOVE
POSTED 11-24-76
REMOVED 1-10-77

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2412]

PART 3740—PUBLIC LAW 585; MULTIPLE MINERAL DEVELOPMENT

Fissionable Source Materials

The Act of August 19, 1958 (42 U.S.C. 2097 and 2098) quitclaimed, remised, and released all reservations of fissionable source materials that were reserved under the authority of the Atomic Energy Act of 1946. Therefore 43 CFR Part 3740 is amended by deleting paragraphs (c) and (d) of § 3746.1.

JACK HORTON,
Assistant Secretary of the Interior.

[FR Doc.76-33871 Filed 11-16-76;8:45 am]

Published in 41 F.R. 50690, November 17, 1976.

Circular Distribution List

GPO 838-457

Title 43—Public Lands: Interior

SUBTITLE A—OFFICE OF THE SECRETARY OF THE INTERIOR

[Circular No. 2413]

PART 28—FIRE PROTECTION EMERGENCY ASSISTANCE

Fire Protection

Secs.
28.1 Purpose.
28.2 Definitions.
28.3 Emergency assistance.

AUTHORITY: Act of May 27, 1955 (42 U.S.C. 1856, 1856b).

§ 28.1 Purpose.

The purpose of this part is to provide criteria for agencies in the Department to render fire protection emergency assistance to fire organizations not within the Department.

§ 28.2 Definitions.

As used in this part:

(a) The term "agency head" means the Secretary of the Interior or an official of the Department of the Interior who exercises authority delegated by the Secretary of the Interior.

(b) The term "fire protection" includes personnel services and equipment required for fire prevention, the protection of life and property, and firefighting; and

§ 28.3 Emergency assistance.

In the absence of a reciprocal fire protection agreement, each agency head may provide emergency fire protection if said emergency fire protection will not jeopardize the property of the United States by making it impossible for the agency head to protect the property of the United States and such assistance is determined to be in the best interest of the United States. The providing of emergency assistance shall not be in the best interest of the United States and may not be granted by an agency head if:

(a) Persons other than those currently employed by the agency at the time of the emergency and trained in the type of emergency assistance being provided would be used in the providing of the emergency assistance.

(b) Assistance is provided to a place more than an hour's travel from where the agency maintains fire protection facilities. Assistance which requires more than an hour's travel may be given for those fire emergencies threatening to last more than 12 hours, or endangering human life.

JACK O. HORTON,
Assistant Secretary of the Interior.

NOVEMBER 17, 1976.

[FR Doc.76-34675 Filed 11-23-76;8:45 am]

Published in 41 F.R. 51794, November 24, 1976 - Effective December 22, 1976.

Circular Distribution List

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT

[Circular No. 2414]

PART 3300—OUTER CONTINENTAL SHELF LEASING; GENERAL

Effect of Suspension on Royalty and Rental, and on Lease Terms; Conforming Amendments

Part 3300 of 43 CFR Chapter II is amended, effective December 3, 1976, as set forth below.

1. Paragraph 3303.5(a) is revised to read as follows:

§ 3303.5 Effect of suspension on royalty and rental.

(a) In the event that under the provisions of 30 CFR 250.12 (c), (d)(1), or (d)(4), the regional Oil and Gas Supervisor of the Geological Survey with respect to any lease directs the suspension of both operations and production, or with respect to a lease on which there is no producible well directs the suspension of operations, no payment of rental or minimum royalty will be required for or during the period of the suspension. In the event that under the provisions of 30 CFR 250.12(d)(1) the Supervisor approves, at the request of a lessee, the suspension of operations or production, or both, or under the provisions of 30 CFR 250.12(d)(3) suspends any operation including production, the lessee will not be relieved of the obligation to pay rental, minimum royalty or royalty for or during the period of suspension

* * * * *

2. Section 3305a.4 is revised to read as follows:

§ 3305a.4 Effect of suspensions on lease term.

In the event that under the provisions of 30 CFR 250.12 (c), (d)(1), or (d)(4), the regional Oil and Gas Supervisor of the Geological Survey directs the suspension of either operations or production, or both, with respect to any lease, the term of the lease will be extended by a period equivalent to the period of the suspension. In the event that under the provisions of 30 CFR 250.12 (c) or (d)(1), the Supervisor approves the suspension of either operations or production, or both, with respect to any lease, the term of the lease will not be deemed to expire so long as the suspension remains in effect.

WILLIAM L. FISHER,
Assistant Secretary of the Interior.

[FR Doc.76-35747 Filed 12-2-76;8:45 am]

Published in 41 F.R. 53019, December 3, 1976.

Circular Distribution List

GPO 838-593

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2415]

PART 4110—GRAZING ADMINISTRATION (INSIDE GRAZING DISTRICTS) (THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS)

PART 4120—GRAZING ADMINISTRATION (OUTSIDE GRAZING DISTRICTS AND EXCLUSIVE OF ALASKA); GENERAL

Records and Administrative Procedures; Grazing Fees

1. Section 4115.2-1(k)(1) is amended by revising subparagraphs (i), (ii) and (iv) to read as follows:

§ 4115.2-1 License and permit procedures, requirements and conditions.

* * * * *

(k) *Fees, payments and refunds.*—(1) *Fees.*

(i) Fees will be charged for the grazing of all livestock on public lands at a rate per animal unit month, except that no fee will be charged for a free-use license. Fees for any fee year will be published as a notice in the FEDERAL REGISTER.

(ii) Fees will be established by the Secretary in equal annual increments effective with the fee year beginning March 1, 1978, to attain fair market value of range forage beginning March 1 of the 1980 fee year. Fair market value is that value established by the Western Livestock Grazing Survey of 1966 or as determined by any study which may be conducted to update the fee based. Annual adjustments will also be made for any of the 1978-80 fee years and thereafter to reflect changes in the current market value as determined by an adequate index(es).

(iv) Fifty percent of the grazing fees collected for grazing domestic livestock on public lands (other than ceded Indian lands) under the Taylor Grazing Act shall be deposited in a separate account in the United States Treasury for the range betterment program.

3. Section 4125.1-1(m)(1) is amended by adding paragraph (iii) to read as follows:

§ 4125.1-1 Leasing procedures; requirements and conditions.

* * * * *

(m) *Fees for grazing leases and crossing permits—(1) Lease rates.* * * *

(iii) Fifty percent of the grazing fees collected for grazing domestic livestock on public lands (other than ceded Indian lands) under the Taylor Grazing Act shall be deposited in a separate account in the United States Treasury for the range betterment program.

* * * * *

JACK O. HORTON,
Assistant Secretary of the Interior.

DECEMBER 29, 1976.

[FR Doc.76-38483 Filed 12-29-76;3:22 pm]

Published in 42 F.R. 778, January 4, 1977 - Effective January 4, 1977.

Circular Distribution List

GPO 839-165

Legal Libra

DEPT OF INTERIOR
BUREAU OF LAND MANAGEMENT
1977 FEB 28 AM 10 00
RECEIVED
MONTANA STATE OFFICE
BILLINGS, MONTANA

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT DEPARTMENT OF THE INTERIOR

SUBCHAPTER C—MINERALS MANAGEMENT

[Circular No. 2416]

PART 3100—OIL AND GAS LEASING

Fees and Rentals

1. Section 3103.2–1 paragraph (b) is revised to read as follows:

§ 3103.2 Fees.

§ 3103.2–1 General statement.

* * * * *

(b) *Transfers.* An application for approval of any instrument of transfer of a lease or interest therein or a filing of any such instrument under § 3106.4 must be accompanied by a fee of $25, except that applications for transfer of a royalty interest must be accompanied by a fee of $10, and an application not accompanied by payment of such a fee will not be accepted for filing by the authorizing officer. Such fee will not be returned even though the application later be withdrawn or rejected in whole or in part.

2. Section 3103.3–2 paragraph (a) is revised to read as follows:

§ 3103.3–2 Advance rental payments.

Rentals shall be payable in advance at the following rates:

(a) On noncompetitive leases issued on and after February 1, 1977, under section 17 of the act for lands which on the day on which the rental falls due lie wholly outside of the known geological structure of a producing oil or gas field, or on which on the day on which the rental falls due the thirty days' notice period under paragraph (b)(1) of this section has not yet expired, an annual rental of $1.00 per acre or fraction thereof for each lease each year.

* * * * *

3. Section 3106.2–1 is revised to read as follows:

§ 3106.2–1 Where filed and filing fee.

An application for approval of any instrument of transfer of a lease or interest therein or a filing of any such instrument under § 3106.4 must be filed in the proper office and accompanied by a fee of $25, except that applications for transfer of a royalty interest must be accompanied by a fee of $10. An application not accompanied by payment of such a fee will not be accepted for filing by the authorizing officer. Such fee will not be returned even though the application may later be withdrawn or rejected in whole or in part.

Signed at Washington, D.C. on December 30, 1976.

JACK O. HORTON,
Assistant Secretary of the Interior.

[FR Doc.76–38495 Filed 12–30–76;3:04 pm]

Published in 42 F.R. 1032, January 5, 1977 - Effective February 1, 1977.

Circular Distribution List

GPO 839 - 166

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2417]

PART 3500—LEASING OF MINERALS OTHER THAN OIL AND GAS; GENERAL

PART 3520—PREFERENCE RIGHT AND COMPETITIVE LEASES

Coal Leases; Diligent Development and Continued Operation

1. Paragraphs (d), (e), (f), and (g) of 43 CFR 3500.0–5 are hereby revised as follows:

§ 3500.0–5 Definitions.

* * * * * *

(d) *Logical Mining Unit (LMU).* A Logical Mining Unit or LMU is an area of coal land that can be developed and mined in an efficient, economical, and orderly manner with due regard to the conservation of coal reserves and other resources. An LMU may consist of one or more Federal leaseholds, and may include intervening or adjacent non-Federal lands, but all lands in an LMU must be contiguous, under the effective control of a single operator, and capable of being developed and operated as a unified operation with complete extraction of the LMU reserves within 40 years from the first approval of a mining plan for that LMU. For purposes of this paragraph (d) "contiguous" shall mean having at least one point in common. No LMU approved after August 4, 1976, shall exceed 25,000 acres, including both Federal and non-Federal coal deposits.

(e) *Logical Mining Unit (LMU) Reserves.* LMU Reserves are defined as being equal to the sum of (1) estimated recoverable reserves under Federal lease in the LMU, and (2) estimated non-Federal recoverable reserves in the LMU. The LMU reserves associated with a Federal lease are the LMU reserves estimated as of the effective date of the LMU, of which that lease is a part, except that the LMU reserves under both paragraphs (e) (1) and (2) of this section may be adjusted by the Mining Supervisor whenever he approves a modification of the LMU boundaries, whenever the lessee surrenders deposits subject to the LMU, or whenever significant new information becomes available about the amount of such reserves, including the time at which a mining plan is approved.

(f) *Diligent Development.* (1) Diligent development of any Federal coal lease issued after August 4, 1976, means the timely preparation for and initiation of production of coal from the LMU of which the lease is a part so that coal is actually produced in commercial quantities by the end of the tenth year from the effective date of the lease. For the purpose of this subparagraph (1), commercial quantities means one percent of the LMU reserves.

(2) Diligent development of any coal lease which was issued before August 4, 1976 means the timely preparation for and initiation of production of coal from the LMU so that coal is actually produced in commercial quantities before June 1, 1986, except that the period of time during which production of coal in commercial quantities must be achieved may be extended as provided in 43 CFR 3520.2–5. For the purpose of this subparagraph (2), commercial quantities means one-fortieth of the LMU reserves.

(g) *Continued Operation.* Continued operation means the production of coal in the amount of one percent of the LMU reserves for each of the first two years following the achievement of diligent development, and an average amount of one percent of the LMU reserves associated with the lease thereafter. The annual average amount shall be computed on a three year basis, and the three-year period for which the average shall be computed shall consist of the year in question and the two preceding years.

(2) 43 CFR 3503.3–2(b)(1) is amended by the addition of the following:

§ 3503.3–2 General statement on royalties.

* * * * *

(b) * * *

(1) The Mining Supervisor shall have discretion, upon the request of the lessee, to authorize the payment of an advance royalty in lieu of continued operation for any particular year. The advance royalty for each lease shall be based on a percent of the value of a minimum number of tons of coal, and the percent shall not be less than the percent prescribed in that lease for the production royalty. For any lease issued after August 4, 1976, the minimum number of tons shall be determined on a schedule sufficient to exhaust the leased reserves in 40 years from the date of approval of the mining plan for the LMU of which the lease is a part; for any lease issued before August 4, 1976, the minimum number of tons shall be determined on a schedule sufficient to exhaust the leased reserves in 40 years from June 1, 1976. Advance royalties shall not be paid for more than ten years in all during the life of any lease, including the life of the lease after readjustment. No payment of an advance royalty during the first 20 years of a lease may be used as a credit against production royalty due after the 20th year of that lease. The Mining Supervisor may, upon notifying the lessee six months in advance, cease to accept advance royalties in lieu of the requirement of continued operation.

3. 43 CFR 3520.2–1 is amended by the addition of the following:

§ 3520.2–1 Duration of leases.

* * * * *

(a) * * *

(3) *Coal.* A coal lease shall be for a period of 20 years and as long thereafter as coal is produced annually in commercial quantities from that lease or the LMU of which it is a part. As the term "commercial quantities" is used in this subparagraph (3) it means quantities of coal sufficient to meet the requirements for continued operation under § 3500.0–5 (g) of this chapter.

4. 43 CFR 3520.2–5 is amended to read as follows:

§ 3520.2–5 Coal: Diligent development and continued operation.

(a) Section 7 of the Mineral Leasing Act (30 U.S.C. 207) provides that each coal lease shall require (1) diligent development, and (2) either continued operation or in lieu thereof, when the Secretary determines that the public interest will be served, payment of an advance royalty. The Secretary has determined that the public interest will be served by authorizing the Mining Supervisor to permit payment of an advance royalty in lieu of continued operation for any particular year. Provisions for advanced royalties are described in § 3503.3–2(b)(1) of this chapter.

(b) Each coal lease shall be subject to the requirements of diligent development and continued operation and shall remain subject to the requirement of continued operation except when operations under the lease are interrupted by strikes, the elements or casualties not attributable to the lessee.

(c) In the case of coal leases issued before August 4, 1976, the ten-year period by the end of which diligent development must have been achieved may be increased as follows:

(1) Upon application of the lessee, the ten-year period shall be extended by an amount of time equal to the period during which diligent development is in the opinion of the Secretary, significantly impaired by (i) a strike, the elements, or

Published in 41 F.R. 56643, December 29, 1976 - Effective immediately.

Circular Distribution List

casualties not attributable to the lessee, (ii) an administrative delay in the Department which is not caused by the lessee's action, or (iii) extraordinary circumstances not attributable to the lessee and not foreseeable by a reasonably prudent operator. In the determination of whether any of the conditions listed in subdivisions (i), (ii) and (iii) of this subdivision occurred and whether one or more of those conditions did in fact significantly impair diligent development, the Secretary's finding shall be final. The Secretary shall, however, not find to be an extraordinary circumstance under (iii) any condition arising out of normally foreseeable business risks such as: fluctuations in prices, sales, or costs, including foreseeable costs of compliance with requirements for environmental protection; commonly experienced delays in delivery of supplies or equipment; or inability to obtain sufficient sales.

(2) Upon application of the lessee, the Secretary may grant one extension, not exceeding five years, of the ten-year period when the lessee shows to the satisfaction of the Secretary that diligent development cannot be achieved within the ten-year period because of (i) time needed to complete development of advanced technology, e.g., in situ, gasification or liquefaction processes; (ii) the large magnitude of the project (ordinarily large magnitude means a mine in which the production in the first year after the end of the extended period for diligent development is expected to be at least two million tons if an underground mining operation or five million tons if a surface mining operation); or (iii) a contract or its equivalent which is a firm commitment for the sale or use of the first one-fortieth of the LMU reserves after the ten-year period. Irrespective of the reason for granting an extension, the lessee must produce the first one-fortieth of the LMU reserves before the end of the extension.

(d) At the time when the Secretary grants an extension under paragraphs (b) and (c) of this section, he shall notify the lessee of the revised date by which he must produce coal in commercial quantities.

5. 43 CFR Subpart 3520 is amended by adding the following:

§ 3520.2–6 Coal: Logical mining unit.

(a) *Establishment and modification of logical mining units.* Every Federal coal lease will automatically be considered by itself an LMU as of the effective date of the lease or June 1, 1976, whichever is later, and may later be included in an LMU with other Federal coal leases or with interests in non-Federal coal deposits, or both. An LMU containing any interest other than a single Federal lease will become effective only at the direction of the Mining Supervisor or upon its approval by the Mining Supervisor when it is requested by the lessee; the Mining Supervisor shall not direct or approve the establishment of such an LMU unless he has determined that the maximum economic recovery of all Federal deposits in the LMU will be served thereby. The boundaries of an LMU may later be changed either upon application by the lessee and with the approval of the Mining Supervisor after consultation with the authorized officer or by direction of the Mining Supervisor after consultation with the authorized officer.

(b) *Amendment of lease terms.* When a Federal coal lease is included in an LMU with other Federal coal leases or with interests in non-Federal coal deposits, the terms and conditions of the lease will be amended so that they are not inconsistent with the requirements imposed on that LMU of which it has become a part. In particular, diligent development, continued operation, and production in commercial quantities anywhere within the LMU, with respect to either Federal or non-Federal coal deposits, shall be deemed to have occurred on each Federal lease in the LMU. The rental and royalty payments on all Federal leases in an LMU shall be combined and advanced royalties paid on any Federal lease in that LMU may, at the request of the operator of the LMU, be credited against those combined royalties.

(c) *Computation of LMU reserves.* The lessee may, upon approval of the authorized officer, surrender his rights to any deposits, and, if he does so, the LMU reserves shall be adjusted. When the Mining Supervisor is determining the LMU reserves, he shall consult the lessee as to any deposits (such as deposits in specified strata) subject to his lease which the lessee does not intend to mine and the rights to which the lessee is prepared to surrender in order to decrease the LMU reserves upon which the requirements of diligent development, continued operation, and production in commercial quantities will be based.

6. 43 CFR 3522.2–1 is amended to read as follows:

§ 3522.2–1 Terms and conditions.

(a) *Potassium and phosphate.* The terms and conditions of potassium and phosphate leases are subject to readjustment at the end of each 20-year period succeeding the effective date of the lease unless otherwise provided by law at the time of the expiration of such periods. Before the expiration of each 20-year period, whenever feasible, the lessee will be notified of the proposed readjustment of terms or notified that no readjustment is to be made. Within 30 days after receipt of the notice, unless the lessee files his objection to the proposed readjusted terms, or the lessee files a relinquishment of the lease, he will be deemed to have agreed to such readjusted terms.

(b) *Coal.* All coal leases will be subject to readjustment at the end of the first 20-year period following the issuance of the lease and at the end of each ten-year period thereafter. Before the expiration of the initial 20-year period or any succeeding 10-year period thereafter, the authorized officer shall if it is feasible, notify the lessee of any proposed readjustment of terms and conditions or that no readjustment will be made. Unless the lessee within 30 days after receipt of notice of any proposed readjustment from the authorized officer files either an objection to the proposed readjustment or a relinquishment of his lease, he will be deemed to have agreed to the readjusted terms. If the date on which a coal lease became liable for readjustment of terms and conditions occurred before August 4, 1976, but the authorized officer prior to that date neither readjusted the terms and conditions nor informed the lessee that no readjustment would be made, the terms and conditions of that lease shall be readjusted to conform to the requirements of the Federal Coal Leasing Amendments Act of 1975.

7. 43 CFR 3523.2–1(b)(1) is amended by the insertion of "(i)" after the word "Coal" and by adding the following subdivisions (ii) and (iii):

§ 3523.2–1 Judicial proceedings.

* * * * *

(b) * * *

(1) * * *

(ii) Any coal lease issued or readjusted on or after August 4, 1976, on which the lessee does not meet diligent development requirements shall be terminated. Any other coal lease on which the lessee does not meet diligent development requirements will be subject to cancellation in whole or in part. Any coal lease on which the lessee does not meet either continued operation or advance royalty requirements will be subject to cancellation in whole or in part. In deciding whether to cancel a lease under the two preceding sentences, the Secretary will not consider adverse circumstances which arise out of: (A) normally foreseeable cost of compliance with requirements for environmental protection; (B) commonly experienced delays in delivery of supplies or equipment; or (C) inability to obtain sufficient sales. The requirements as to notice included in subdivision (i) of this subparagraph are applicable to cancellations under this subdivision (ii) also.

(iii) Should a lease be cancelled or relinquished for any reason, all deferred bonus payments shall be immediately payable and all rentals and royalties, including advance royalties already paid or due, will be forfeited to the United States.

Dated: December 22, 1976.

THOMAS S. KLEPPE,
Secretary of the Interior.

[FR Doc.76-38174 Filed 12-28-76;8:45 am]

GPO 839 - 168

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2418]

PART 3040—ENVIRONMENT AND SAFETY

PART 3500—LEASING OF MINERALS OTHER THAN OIL AND GAS, GENERAL

PART 3520—PREFERENCE RIGHT AND COMPETITIVE LEASES

Competitive Coal Leasing Surface Mining Regulations: Coal; Correction

AGENCY: Land Management Bureau, Interior.

ACTION: Correction.

SUMMARY: This document corrects a final rule that appeared at page 4442 in the FEDERAL REGISTER of Tuesday, January 23, 1977 (FR Doc. 77-2256). Several minor errors were made in the text of the rulemaking document and the numbering system used in the document is not consistent with the numbering system used throughout Title 43. This document corrects the errors in the text and changes the numbering to conform with the numbering system used in Title 43.

EFFECTIVE DATE: May 17, 1977.

SUPPLEMENTARY INFORMATION: The final rulemaking document amended Parts 3040, 3500, and 3520 of Title 43 of the Code of Federal Regulations. Several minor errors were made in the text of the rulemaking document and the numbering system used in the document is not consistent with the numbering system used throughout Title 43. This document corrects the errors in the text and changes the numbering to conform with the numbering system used in Title 43. In connection with the renumbering process, sections of the rulemaking are rearranged to place them in proper sequence. No substantive changes are made in the final rulemaking; therefore, rulemaking procedures and public participation are not considered necessary.

FOR FURTHER INFORMATION CONTACT:

Billy R. Templeton, 202-343-8735.

Final rulemaking published on pages 4442 through 4457 of the FEDERAL REGISTER of January 25, 1977, is hereby corrected to read as follows:

PART 3040—ENVIRONMENT AND SAFETY

1. Subpart 3041, in Title 43, Part 3040 is revised as follows:

Subpart 3041—Surface Management and Protection

Sec.
3041.0-1 Purpose.
3041.0-3 Authorities.
3041.0-4 Responsibilities.
3041.0-5 Definitions.
3041.0-7 Applicability.
3041.1 Use of Surface.
3401.2 Technical examination/environmental assessment.
3041.2-1 Technical examination/environmental assessment report.
3041.2-2 Obligations and standards of performance.
3041.3 Compliance or performance bond.
3041.4 Procedures and public participation.
3041.5 Completion of operations and abandonment.
3041.6 Reports.
3041.7 Notice of noncompliance: Revocation.
3041.8 Variances.

§ 3041.0-1 Purpose.

(a) The purpose of this subpart is to establish rules and regulations to be followed in the management of the federally-owned coal estate consistent with the policies, goals, and objectives established by the Acts cited in § 3041.0-3 of this Subpart, regardless of surface ownership, to ensure effective and reasonable regulation of surface coal mining operations in accordance with the requirements hereof, as an appropriate and necessary means to minimize so far as practicable the adverse social, economic and environmental effects of such operations.

§ 3041.0-3 Authorities.

The regulations contained in this Subpart are issued pursuant to the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181-287), and the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351-359), and in accordance with the policies set forth in the National Environmental Policy Act of 1969, as amended, (42 U.S.C 4321-47). Regulations governing the issuance of Federal coal leases and licenses are found in 43 CFR 3500 of this Chapter. Regulations governing operations conducted on lands subject to lease, permit, or license are found in 30 CFR 211. Regulations setting forth the general and basic policies for disposal and management of the public lands are found in 43 CFR 1725 of this Chapter.

§ 3041.0-4 Responsibilities.

(a) The Bureau of Land Management (BLM) exercises at the Bureau level the Secretary's discretionary authority to determine whether or not mineral leases and licenses are to be issued in accordance with 43 CFR Part 3500. The BLM is responsible for issuing coal leases and licenses, and is the office of record in mineral leasing matters.

(b) The Geological Survey (GS) exercises the Secretary's authority regarding operations conducted within the area of operations by permittees, lessees, and licensees and determines the action to be taken by them from the standpoint of the development, conservation, and management of mineral resources under the jurisdiction of the Department. The Geological Survey is responsible for all geologic, engineering, and economic value determinations for the Department's mineral leasing program. These determinations include: the mineral characteristics of lease and permit areas; parceling; appropriate resource evaluation; reserves; investments, diligent development, and minimum production requirements; and all other terms and conditions relating to mineral operations under leases and licenses.

(c) The BLM or other Federal surface managing agency, in consultation with the GS and the surface owner if other than the United States, formulates the requirements to be incorporated in leases and licenses for the protection of the surface and nonmineral resources and for reclamation, using the reclamation obligations and standards of performance contained in § 3041.2-2 of these regulations and in 30 CFR Part 211.40.

(d) The GS reviews and approves exploration and mining plans, and authorizes the abandonment of operations, in consultation with the BLM or other appropriate Federal surface managing agency, and the surface owner, if other than the United States, on the adequacy of the surface use, environmental protection, and reclamation aspects of such plans and will not grant approval if inconsistent with the BLM's or other Federal surface managing agency's recommendations without further discussions and referrals for resolution pursuant to 30 CFR Part 211.

(e) As to the lands outside of the area of operations, the authorized officer of the BLM or other appropriate Federal surface managing agency is responsible for conducting compliance examinations and for assuring compliance by the lessee or licensee with the requirements of this Subpart, and the terms and conditions of a lease or license and for reporting noncompliance to the Mining Supervisor for appropriate action. As to the lands inside the area of operations the GS examines operations to ensure compliance by the lessee or licensee with the terms and conditions set forth in the provisions of any lease or license or any approved mining or exploration plan. GS refers to BLM any instance of noncompliance with lease terms which may require cancellation action, and BLM may initiate such action. With respect to approval of access roads, pipelines, utility routes and other surface uses outside the area of operations, the BLM, or other Federal surface managing agency, has the primary responsibility but obtains the recommendations of the GS before taking final actions. Except as may be expressly provided for in § 3041.7 of this Subpart and 30 CFR Part 211.72, orders to operators for any remedial action are the exclusive responsibility of the Geological Survey.

(f) Subject to the supervisory authority of the Secretary, the regulations in this Subpart shall be administered by the Director, Bureau of Land Management through the authorized officers having jurisdiction over the lands subject to these regulations and authorized to perform the duties described. Prior to issuance of any coal lease or license, the authorized officer shall consult with and accept and consider recommendations from the Mining Supervisor, the Federal surface managing agency when other than the BLM, or the surface owner, as to the terms and conditions required to

Published in 42 F.R. 25462, May 17, 1977 - Effective May 17, 1977.

Circular Distribution List

achieve the purpose of this Subpart. Any disagreements that cannot be resolved between the GS and BLM arising in connection with any such issuance of a lease or license will be referred for resolution to the appropriate Assistant Secretaries or to the Under Secretary of the Department of the Interior. Leases issued for lands, the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior, shall contain the terms and conditions prescribed by that agency with respect to the use and protection of the nonmineral interests in those lands.

§ 3041.0–5 Definitions.

As used in this Subpart, the following terms shall have the following meanings:

(a) *"Acid or toxic producing materials"* means natural or disturbed earth materials having chemical and physical characteristics that, under mining or postmining conditions of drainage, exposure, or other processes, may produce effluents that contain chemical constituents, such as acids, bases, or metallic compounds, in sufficient concentration to individually or in combination adversely affect the environment.

(b) *"Affected lands"* means any lands affected or to be affected by exploration, development, and mining operations and the construction of facilities necessary and related to such operations.

(c) *"Approximate original contour"* means the surface configuration achieved by backfilling and grading of the mined area so that it closely resembles the surface configuration of the land prior to mining (although not necessarily the original elevation) and blends into and complements the drainage pattern and topography of the surrounding terrain.

(d) *"Area of operations"* means that area of the leased or licensed lands which is required for exploration, development, producing, and processing operations, including all related surface structures and facilities, and which is delineated on a map or plat that is made a part of the approved exploration or mining plan.

(e) *"Authorized officer"* means any officer designated by any Federal surface managing agency to exercise its authority in matters relating to coal leases and licenses and to the provisions of this Subpart.

(f) *"Coal"* includes coal of all ranks from lignite to anthracite.

(g) *"Compaction"* means the reduction of porous spaces among the particles of soil and rock generally caused by running heavy equipment over the earth materials, as in the process of leveling the overburden material on strip mine spoil piles or banks, for the purpose of increasing the bearing capacity and stability of the earth materials.

(h) *"Contemporaneously as practicable"* means with respect to reclamation of mined or otherwise disturbed areas, the commencement, conduct and completion of reclamation activity as soon after disturbance as possible, without undue physical interference with ongoing operations, leaving a minimum of land unreclaimed, consistent with the objectives of environmental protection set forth in this Subpart.

(i) *"Daylighting"* is a term used to define the surface mining procedure for exposing an underground mined area to remove remaining coal.

(j) *"Director"* means the Director of the Bureau of Land Management, U.S. Department of the Interior.

(k) *"Exploration"* means the detailed investigation and acquisition of data pertaining to a mineral deposit, including activities for identifying regions or specific areas in which deposits are most likely to occur, and activities used to establish the nature of a coal deposit preparatory to mining.

(l) *"Exploration plan"* means a detailed plan submitted to the Mining Supervisor for approval before exploration operations commence showing the location and type of exploration work to be conducted, environmental protection procedures, roads, and reclamation procedures to be followed upon completion of such operations.

(m) *"General Coal Mining Order"* means a formal numbered order issued by the Mining Supervisor, with the prior approval of the Division Chief, and published, after opportunity for public comment, in the FEDERAL REGISTER, which implements the regulations in this Part and applies to coal mining and related operations in a specified geographic area.

(n) *"Impoundment"* means an artificially built, dammed, or excavated place for the retention of water or sediments. A permanent impoundment is one that is intended to remain after final abandonment of the operation, and shall be identified as such in approved plan.

(o) *"Leased lands, leased premises, or leased tract"* means lands embraced within a coal lease and subject to the regulations in this Subpart.

(p) *"Lessee"* means any person or persons, partnership, association, corporation, public body or governmental entity to whom a coal lease is issued, subject to the regulations in this Subpart, or an assignee of such lease under an approved assignment.

(q) *"Licensee"* means any individual, association or individuals, or municipality to whom a coal license is issued pursuant to the provisions of Section 208 of Title 30 of the United States Code, or any person, association, corporation, public body or governmental entity to whom an exploration license is granted under section 201(b) of Title 30 of the United States Code.

(r) *"Logical mining unit"* means an area of land designated as such by the Geological Survey pursuant to applicable Departmental regulations.

(s) *"Methods of operation"* means the method and manner by which any activities are performed by the operator, as described in an exploration or mining plan.

(t) *"Mine"* means an underground or surface excavation and the surface or underground support facilities that contribute directly or indirectly to coal mining, preparation, and handling.

(u) *"Mining plan"* means a detailed plan for development of the coal resource submitted to the Mining Supervisor for approval prior to commencement of any mining operation, showing the proposed location, method, and extent of mining and all related activities necessary and incidental to such operation, including steps to be taken to reclaim disturbed areas, to mitigate adverse impacts, and to otherwise meet the performance standards and requirements set forth in this Subpart.

(v) *"Mining Supervisor"* means the Area Mining Supervisor, Conservation Division, Geological Survey, or District Mining Supervisor or other subordinate acting under his direction.

(w) *"Notice of Availability"* means a formal notification, by the appropriate Federal officer, to appropriate Federal, state and local agencies and interested individuals or groups of individuals, of the availability for inspection of information, data, proposed plans or modifications thereof, pending decisions and other documents subject to such notice. Any such notice shall include the nature of the information, data, plan or modification, decision or other document involved; the name and mailing address of any applicant; the nature, location (county, township, range and section), duration and brief description of any proposed operations; the date upon which any proposed action might be taken; and, when appropriate, a specific time limit for public review, comment or request for any departmental action, including the holding of any public meeting. For the purpose of ensuring appropriate distribution of such notices, there shall be maintained at each office of a Mining Supervisor or authorized officer of the Department of the Interior a mailing list which shall consist of the names and mailing addresses of all appropriate Federal, state or local agencies and any individuals or groups of individuals who have requested in writing to be included on such lists. All notices of availability shall be mailed to such agencies, individuals or groups at the addresses indicated on such lists.

(x) *"Notice of noncompliance"* means a written notice of operator noncompliance issued pursuant to Section 211.72 of 30 CFR Part 211.

(y) *"Operator"* means a lessee or licensee, or one conducting operations on lands under the authority of the lessee or licensee.

(z) *"Overburden"* means the earth, soil, rock, and other natural materials which lie above the coal being mined.

(aa) *"Permanent abandonment"* means the cessation of exploration or mining or other operations set forth in an approved plan on all or any portion of lands covered by a lease or license and subject to the provisions of this Subpart, where it is the intent of the operator not to continue operations at the mine or portion thereof.

(bb) [Omitted].

(cc) [Omitted].

(dd) *"Pollution"* means man-made or man-induced adverse alteration of the

chemical, physical, biological, and radiological integrity of land, water or air, which reduces, or has the potential of reducing the beneficial uses of these resources.

(ee) *"Post mining land use"* means that use which will be made of affected lands after mining and reclamation is completed and which is specified in a mining or exploration plan approved pursuant to 30 CFR 211.

(ff) *"Preliminary data"* means data, consisting of maps and text, submitted by an applicant for a lease or license to the authorized officer of the BLM, which describes the applicant's proposal in the detail necessary to allow the authorized officer to conduct a technical examination and environmental analysis as described in § 3041.2.

(gg) *"Preparation"* means any crushing, sizing, cleaning, drying, mixing or other processing of coal to prepare it for market which is conducted on lands subject to this Subpart.

(hh) *"Reclamation"* means the process of returning affected lands to a stable condition and form consistent with their premining productivity and use, or other approved post mining land use.

(ii) *"Road"* means any open way for passage or travel upon which to transport people, equipment, materials, or coal, which is constructed, improved or maintained by the operator and which is used to service the pit, bench, underground mine workings, loading facilities or exploration activities.

(jj) *"Secretary"* means the Secretary of the Interior.

(kk) *"Significant vegetation"* means farm crops, including grasses and forbs, that are integral parts of agriculture or ranching operations and the natural vegetation of forests or meadows with significant recreational, watershed, agricultural, or wildlife habitat value.

(ll) *"Spoil"* means soil, rock, and other earth materials that are broken, moved, dumped, or otherwise significantly disturbed during surface coal mining operations subject to this Subpart.

(mm) *"Subsidence"* means a lowering of surface elevations over an underground mine caused by loss of support and subsequent caving of strata lying above the mine.

(nn) *"Surface owner"* means an entryman, or a person or persons who hold legal title to the land surface.

(oo) *"Topsoil"* means natural earth materials at or vertically adjacent to the land surface with physical and chemical characteristics suitable for support of vegetation.

(pp) *"Valley floors"* means the channelways, floodplains, and adjacent low terraces of streams that are flooded during periods of high flow and that are underlain by unconsolidated stream-laid deposits. Excluded are higher terraces and slopes underlain by colluvial and other surficial deposits normally occurring along valley margins.

(qq) *"Waste"* means solid or liquid refuse, rubbish, or other valueless material which is produced by or in connection with coal mining operations, including exploration, production, development, preparation and other related activities, and which has no useful purpose in connection with any remaining operations.

§ 3041.0–7 Applicability.

(a) This Subpart sets forth regulations governing reclamation standards, use of surface, bond requirements, and reports relating to leases and licenses issued by the BLM with respect to Federal coal deposits located on public domain and acquired lands of the United States and reserved Federal coal deposits underlying lands the surface of which is privately owned. These regulations do not govern the leasing or development of coal deposits owned by Indians and subject to the Trust protection of the United States, which are controlled by regulations found in 25 CFR Chapter 1.

(b) The provisions of this Subpart shall become effective upon May 17, 1976 except as hereinafter provided.

(1) Existing operations.

(i) On and after 180 days from the effective date of this Subpart, the provisions of § 3041.2–2(f) shall apply to all existing operations with respect to lands from which the overburden has not previously been removed, provided, however, that this subparagraph shall not be deemed or construed so as to apply the requirements of subparagraphs 3041.2–2(f) (1) and (2), hereof to any operation for which a mining plan has been approved on or before the effective date of this Subpart and for which a variance pursuant to the provisions of subparagraph 3041.2–2(f)(2) would be required.

(ii) On or before 18 months from the effective date of this Subpart, the operator of each existing operation shall have submitted and shall have obtained the approval of a plan or modification thereof which shall comply with all applicable provisions of this Subpart, provided, however, that if the Director of the GS determines that a proposed new plan or modification of an existing plan was prepared and submitted in timely fashion, taking into account the complexity of the operation and of the plan or modification involved, but that administrative delay thereafter has prevented approval within the time specified, the time for compliance with this paragraph may be extended by order of the Director of the GS for an amount of time equal to the duration of such delay.

(iii) For the purpose of this paragraph, the term "existing operation" shall mean:

(A) All operations for which a plan has been approved on or before the effective date of this Subpart, and

(B) All operations with respect to which a proposed plan has been submitted to the Department on or before the effective date of this Subpart, and with respect to which proposed plan the Department has on that date either completed its environmental assessment and determined that no environmental statement under Section 102(2)(C) of the National Environmental Policy Act is necessary, or has determined that such a statement is necessary and has commenced, and expended substantial resources of the Department in the preparation or completion of, such a statement.

(iv) On or before 90 days from the effective date of this Subpart, the Director of the Geological Survey shall review all proposed plans which have been submitted to the Department on or before the effective date of this Subpart and, after consultation with appropriate Federal surface managing agencies, publish in the FEDERAL REGISTER a list which shall identify each such proposed plan and whether it will be considered to cover an existing operation.

(2) All operations or proposed operations not included in the definition of "existing operation" in the preceding paragraph shall be considered to be new operations, and shall be subject to the provisions of this Subpart upon the effective date hereof.

(3) The provisions of § 3041.7(c) of this Subpart shall apply immediately upon the effective date of this Subpart.

(c) To the maximum extent possible, all environmental statements and all approvals of plans covering existing operations which are pending before the Department on the effective date of this Subpart shall take into account and shall reflect and implement the provisions and purposes hereof; provided, however, that nothing in this subparagraph shall be construed to relieve any operator of the obligation imposed by subparagraph (b)(1)(i) of this section.

(d) Nothing in this Subpart shall be deemed or construed as increasing or diminishing any rights not in conflict with Federal law held by any person, including any surface owner or entryman, arising under the laws of any State and relating to the giving or withholding of consent to, or consultation in connection with, entry to any land for the purpose of conducting operations subject to this Subpart.

§ 3041.1 Use of surface.

(a) The operator shall be entitled to use only so much of the surface of the lands subject to a lease or license as is deemed necessary and has been designated in an approved plan. This Subpart shall not be construed to authorize any use of the Federal lands for a power generation plant or a commercial or industrial facility. Separate permits for such uses must be obtained from the appropriate agency. The operator shall not be entitled to use any mineral materials subject to the Materials Act except as provided by Part 3600 of this Chapter.

(b) Operations conducted in connection with other authorized uses on the same lands shall not unreasonably interfere with or endanger operations conducted in connection with uses authorized under this Chapter, nor shall operations authorized and conducted pursuant to this Chapter unreasonably interfere with or endanger operations under any lease, permit, license, or other use authorized pursuant to the provisions of any other Act.

§ 3041.2 Technical examination/environmental assessment.

The appropriate authorized officer, with the assistance of the Mining Supervisor, shall make a technical examination and environmental assessment of the area covered by a competitive coal lease application or on Bureau motion, pursuant to the provisions of this section.

(a) The technical examination shall include:

(1) An examination of the technical aspects of the proposed operations set forth in any preliminary data and information; and

(2) An evaluation of the impacts of such operations or, if on BLM motion, the effect of coal leasing and development, on other land uses, resources, or land management programs on or adjacent to the area.

(b) The environmental assessment shall include an analysis of the impact of the proposed operations set forth in any preliminary data and information and of alternatives thereto, or, if on BLM motion, the impacts of coal leasing and development on the living and nonliving components of the environment.

§ 3041.2–1 Technical examination/environmental assessment report.

(a) Following completion of the technical examination and environmental assessment described in the preceding Section, the authorized officer shall prepare a report which sets forth recommendations as to (1) land which should be excluded from any lease or license in order to avoid mining where reclamation is not attainable or assured, or in recognition of other exclusive land use management priorities; (2) measures required to comply with the reclamation and performance standards set forth in this Subpart; (3) necessary conditions and amounts of bonds to cover estimated reclamation costs for areas that will be disturbed during the initial 5-year period of the lease, permit, of license; (4) any additional, more stringent requirements needed in the lease or license pursuant to § 3041.1(e) of this Subpart.

(b) If it is recommended that a specific area within the applied for lands be excluded from a lease or license, or modification thereof, the report shall set forth with reasonable specificity the facts upon which such recommendation is based.

§ 3041.2–2 Obligations and standards of performance.

(a) Any operator who accepts a coal lease or license shall comply with, and be bound by, the general obligations and standards of performance set forth in this section and such additional and more stringent specific requirements as may be contained in the terms and conditions of such lease or license.

(b) If the appropriate authorized officer of the BLM determines that an approved exploration or mining plan should be required to be revised or supplemented to adjust to changed conditions or to correct oversights, he may propose such revision or supplement to the Mining Supervisor for action pursuant to the provisions of 30 CFR Part 211 relating to changes in plans.

(c) Surface coal mining operations shall be conducted so as to assure the extraction of the coal resource to the maximum extent possible, taking into account existing technology, commercially available equipment, the cost of production, and the quality and quantity of the coal resource, so that future environmental disturbance through the resumption of mining will be minimized.

(d) The operator shall, in accordance with the terms and conditions of the lease or license (1) take visual resources identified by the Federal surface managing agency into account in the planning, design, location, and construction of facilities on the affected lands; and (2) take such action as may be needed to minimize, control, or prevent damage to the recreational, cultural, scientific, historical and known or suspected archeological and paleontological values of the land contained therein.

(e) The following performance standards shall be applicable to the surface effects of underground mining.

(1) Each operator of an underground coal mine shall adopt measures consistent with feasible known technology in order to prevent or, in those instances where the mining method used requires planned subsidence in a predictable and controlled manner, control subsidence; maximize mine stability; and maintain the value and use of surface lands.

(2) Where pillars or panels are not removed and controlled subsidence is not part of the mining plan, pillars or panels of adequate dimensions shall be left to assure stability giving due consideration of the thickness and strength characteristics of the coal beds and of the strata above and immediately below the coal bed.

(f) The following performance standards shall be applicable to all coal exploration, development, mining, preparation, handling, and reclamation operations on the surface of lands subject to this Subpart except as otherwise provided by the action of the Secretary under 30 CFR 211.75(a):

(1) The operator shall reclaim affected lands pursuant to his approved plan, as contemporaneously as practicable with operations, to a condition capable of supporting all practicable uses which such lands were capable of supporting immediately prior to any exploration or mining, or equal or better uses that have been approved in accordance with this Subpart.

(2) The operator shall replace overburden and waste materials in the mined area by backfilling (compacting, where necessary, to ensure stability or to prevent leaching of toxic materials), grading or other means, so as to cover all acid-forming or other toxic materials and eliminate highwalls and spoil piles and restore the approximate original contour. Where the thickness of the coal deposits relative to the volume of overburden is large and where the overburden and other spoil and waste materials are either insufficient or more than sufficient to restore the approximate original contour, the operator shall, in order to provide adequate drainage, backfill, grade, and where necessary, compact, using all available overburden or spoil material, to obtain the lowest practicable grade, which shall in any event be less than the angle of repose. Excess overburden or other spoil material shall be fully reclaimed in accordance with the requirements of this Subpart. Variance from the requirements of subparagraphs (1) and (2) of this paragraph may be allowed in an approved mining plan if the Director of the Geological Survey, with the concurrence of the Director of the Bureau of Land Management or the comparable appropriate authorized officer, determines that unusual physical conditions at the site, such as steeply dipping coal beds or multiple seam mining, exist, and such conditions make backfilling pursuant to such requirements impracticable as a result of the volume of material excavated or environmentally undesirable as a result of the duration of the operation.

(3) The operator shall stabilize and protect all surface areas, including spoil piles, affected by the coal mining and reclamation operation, to effectively control slides, erosion, subsidence, and attendant air and water pollution.

(4) The operator shall remove topsoil separately, for replacement on the backfill area, and if not so utilized immediately, segregate it in a separate pile from other spoil. When topsoil is not to be replaced on a backfill area within a time short enough to avoid deterioration, the operator shall establish and maintain an approved quick growing vegetative cover or employ other approved measures so that the topsoil is protected from wind and water erosion and establishment of noxious plant species, and is in a condition for sustaining vegetation when used during reclamation. If topsoil is of insufficient quantity or of poor quality for sustaining vegetation, and if other excavated materials can be shown to be more suitable for revegetation, then the operator may be authorized in the approved plan to remove, segregate, protect, and utilize in a like manner such other materials.

(5) The operator shall ensure that water impoundments, water retention facilities, dams, or settling ponds have been set forth in an approved plan, and ensure that:

(i) Any such facility is adequate for its intended purposes and the quality and quantity of impounded water will be suitable for its intended use.

(ii) Any such facility is designed, located, built, used, and maintained in accordance with sound engineering standards and practices and applicable Federal and State laws and regulations, to ensure that such facilities will have necessary stability with an adequate margin of safety.

(iii) Final grading will provide adequate safety and access for proposed or reasonably anticipated water users.

(iv) Such facilities will not have a significant adverse impact on the water resources utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses, provided, however, that this subparagraph shall not be deemed or construed to increase or diminish any property rights to any water held by any person.

(v) No mine or processing waste is used in the construction of such facilities unless authorized in the approved plan.

(6) The operator shall cover or plug all auger mine holes with noncombustible and, where necessary to minimize control or prevent harmful drainage, impervious material.

(7) The operator shall utilize the best practicable commercially available technology to minimize, control or prevent disturbances of the prevailing quality, quantity and flow of water in surface and ground water systems, and of the prevailing erosion and deposition conditions at the mine site and in affected offsite areas, both during and after coal mining operations and reclamation, by:

(i) Controlling acid or toxic drainage and the adverse consequences thereof by such measures as, but not limited to, diverting surface runoff water away from disturbed areas; excluding oxygen from, or restricting the flow of water through acid or toxic-producing minerals; treating drainage to reduce acid or toxic content which adversely affects downstream water upon being released to water courses; and casing, sealing, or otherwise treating drill holes, shafts, and wells to keep acid or toxic drainage from entering ground and surface waters.

(ii) Conducting surface mining operations so as to minimize, control, or prevent (A) contributions of suspended solids to streamflow or runoff outside the mining site above natural levels under seasonal flow conditions as measured for a period and at sites determined by the Mining Supervisor, in consultation with the appropriate authorized officer, and (B) except where specifically authorized in an approved plan, deepening or enlarging of stream channels where operations include the discharge of water from mines.

(iii) Removing or modifying siltation structures after disturbed areas are revegetated and stabilized unless otherwise authorized by the Mining Supervisor in an approved plan, with the concurrence of the appropriate authorized officer, provided, however, that any siltation structure retaining water shall, in any event, be subject to the requirements of § 3041.-2-2(f)(5) of this Subpart.

(iv) Protecting the quality, quantity and flow, including depth of flow, of upstream and downstream surface and ground water resources of those valley floors which provide water sources that support significant vegetation or supply significant quantities of water for other purposes, by such measures as, but not limited to, relocating and maintaining the gradients of stream, avoiding mining installing, reestablishing or replacing acquifers or acquicludes, and replacing soils, provided, however, that this subparagraph shall not be deemed or construed to increase or diminish any property rights to any water held by any person.

(8) The operator shall: (i) Treat or dispose of all rubbish and noxious substances in a manner designed to minimize, control or prevent air and water pollution and the hazards of ignition and combustion.

(ii) Dispose of all waste resulting from the mining and preparation of coal in a manner designed to minimize, control or prevent air and water pollution and hazards of ignition and combustion. Where surface disposal of solid wastes in areas other than the mine workings or other excavations has been authorized in the approved plan, stabilize such waste including, where necessary, constructing waste piles in compacted layers with the use of incombustible and impervious materials; shape waste piles to be compatible with the natural surroundings and terrain; cover with topsoil or other suitable material in accordance with subparagraph (f)(4) of this section; and revegetate in accordance with subparagraph (f)(13) of this section. All impoundments of liquid wastes shall comply with the requirements of subparagraph (f)(5) of this Section. Waste containing coal in such quantity that it may be later separated from the waste by washing or other means shall be stored separately.

(9) Except as provided herein, the operator shall not conduct excavation, drilling, or blasting operations within 200 feet of an active or abandoned underground mine. Where it can be established by certified maps or inspection of such an underground mine that such activities may be conducted without danger of interference with, or penetration of, an underground mine, they may be authorized in an approved plan to be conducted up to but not less than 25 feet from such underground mine provided that nothing in this paragraph shall preclude daylighting or similar surface coal mining activities intended to improve resource recovery, abate water pollution, or eliminate public hazards resulting from such underground mines.

(10) To prevent personal injury or damage to public and private property, the operator shall use explosives only in accordance with all applicable Federal and State laws and an approved plan and shall:

(i) Provide adequate advance written notice, by publication and/or posting of planned blasting schedules, to local governments and to residents who might be affected by the use of such explosives, and maintain a log of the magnitudes and times of blasts for a period of at least two years.

(ii) Limit the size, timing, and frequency of blasts, as determined by the physical conditions of the site.

(11) The operator shall design to applicable standards, construct, maintain and, when no longer necessary and unless otherwise authorized in an approved plan, remove, all roads, pipelines, powerlines and similar utility access facilities and associated bridges, culverts and ditches, into and across the site of operations, in a manner that will minimize control or prevent erosion and siltation, fugitive dust, pollution of water, damage to fish or wildlife or their habitat and public or public property.

(12) (i) Roads shall not be surfaced with any acid or toxic producing material. No access roads will be constructed unless (A) the operator shall have first submitted a surveyed profile accompanied by typical cross-sections of the road and ditches, showing pipe, entrance, exit channels and sediment control structures and other structures or configurations to be used on the road to meet performance standards and (B) the location shall have been marked and inspected, and approved by the Mining Supervisor, in consultation with the appropriate authorized officer and the surface owner, if other than the United States.

(ii) No access road shall be constructed in a stream, nor shall any stream or stream bed be used as an access road. Insofar as possible, all roads shall be located on benches, ridges, and flatter slopes to enhance stability and minimize disturbance. Stream fordings shall be avoided and the normal seasonal flow and the normal seasonal sediment load shall not be detrimentally affected by access roads in a continuous fashion that results in harm to the aquatic ecosystem. Provided, however, that nothing in this subparagraph shall be construed to prohibit relocation or alteration of such beds or channels pursuant to the provisions of this Subpart and as set forth in an approved plan.

(iii) For the purpose of paragraph (f)(12)(1) of this section, "access roads" shall not include temporary roads constructed within a working pit for the purpose of use by equipment and personnel for access to the coal being mined.

(13) (i) The operator shall, except where other reclamation based upon post-mining land use and not requiring revegetation pursuant to the requirements of this section is expressly provided for in an approved plan, establish on regarded areas and all other affected lands a diverse vegetative cover, native to the area and capable of regeneration and plan succession at least equal in density and permanence to the natural vegetation provided, however, that the Mining Supervisor, with the concurrence of the appropriate authorized officer may allow the use of approved mixtures of introduced or native species where preferable to achieve quick cover or assure successful revegetation. In approving such mixture, preference will be given to non-toxious species.

(ii) The operator's responsibility and liability under his performance bond for revegetation of each planting area shall extend until such time as the appropriate authorized officer, in consultation with the Mining Supervisor and the surface owner, if other than the United States, determines that successful revegetation in compliance with subparagraph (i) of this subsection has occurred, provided, however, that this period shall extend for

a minimum of five full years after the first planting, and for a total period of liability not to exceed 10 years from the original planting; and further provided that,

(A) Where the appropriate officer, in consultation with the Mining Supervisor, determines that natural conditions such as annual precipitation, soil characteristics and native vegetation are stable and favor rapid revegetation, and that revegetation pursuant to subparagraph (i) of this subsection is likely to occur before the expiration of such minimum period, he may specify in the lease, permit, or license that such minimum period will not apply with respect to some or all of the lands included in such lease, permit or license; and

(B) Where during any such minimum period such authorized officer, in consultation with the Mining Supervisor and the surface owner, if other than the United States, determines that natural conditions such as annual precipitation and soil characteristics are sufficiently unstable so as to favor only slow and uncertain revegetation, he may recommend to the Mining Supervisor that the liability of the operator be extended for a period of up to five years beyond the period initially established, if the financial liability that would be incurred by the operator as a result is reasonably commensurate with the increased probability of successful revegetation.

(iii) During the relevant period of liability, the Mining Supervisor and the appropriate authorized officer shall jointly inspect and evaluate the revegetated areas pursuant to subparagraph 3041.6 (b) (2) hereof.

(14) The operator shall: (i) Except as provided in subparagraph (ii) hereof, allow public access to and upon Federal lands subject to his lease, permit, or license for all lawful and proper purposes, except where such access would unduly interfere with his authorized use.

(ii) Regulate public access, vehicular traffic, and wildlife or livestock grazing in all areas of active operations, including lands undergoing reclamation, in order to protect the public, wildlife and livestock from hazards associated with such operations, and to protect revegetated areas from unplanned and uncontrolled grazing. For this purpose, the operator shall provide warning signs, fencing, flagmen, barricades, and other safety and protective measures as may be necessary.

(15) Coal storage areas shall be designed and maintained so as to eliminate fire hazards from spontaneous combustion and other accidential ignition. If a coal seam exposed by surface mining or an accumulation of slack coal or combustible waste becomes ignited during the term of a lease, the operator shall immediately take all necessary steps to extinguish the fire.

(16) Upon completion or temporary or permanent abandonment of mining operations in all or any part of a strip pit, the face of the coal shall be covered with noncombustible material that will effectively protect the coal bed from becoming ignited.

(17) The driving of any underground openings by auger or other methods from any strip pit shall not be undertaken except as specifically approved by the Mining Supervisor, in an approved plan.

§ 3041.3 Compliance or performance bond.

(a) The provisions of Subpart 3504 of this Chapter are hereby made applicable to this subpart. In addition each compliance bond will be conditioned upon faithful compliance with the regulations in this subpart and any additional terms and conditions of the lease or license.

(b) Prior to issuing a lease or license, the authorized officer, after consultation with the Mining Supervisor, shall ensure that the amount of the compliance bond or bonds to be furnished is sufficient to ensure reclamation in accordance with the performance and reclamation standards in § 3041.2–2, and with the terms and conditions of the lease or license.

(c) An application for a lease or license may be denied any applicant or offeror who has previously forfeited a bond because of failure to comply with an approved plan unless the affected lands covered by such plan have been reclaimed without cost to the Federal Government. Nothing in this subparagraph shall be deemed to modify or limit any discretionary authority of the authorized officer of the BLM otherwise to deny for cause any application for a lease or license.

(d) Once a lease or license has been issued the authorized officer, after consulting with and receiving the recommendation to increase or to release in whole or in part any compliance bond or bonds so that the amount of the compliance bond or bonds will at all times be sufficient to cover the estimated costs of completion of the remaining reclamation requirements of the approved plan and of the terms and conditions of the lease or license.

§ 3041.4 Procedures and public participation.

Written findings. Except as may be otherwise expressly set forth in this Subpart, decisions and determinations of any appropriate authorized officer acting pursuant to this Subpart or to 30 CFR Part 211 with respect to issuance of leases, approval of mining plans or modifications thereof, and abandonment of operations shall be in writing, shall set forth with reasonable specificity the facts and the rationale upon which such decisions or determinations are based, and shall be available for public inspection during normal business hours at the offices of such officer.

§ 3041.5 Completion of operations and abandonment.

(a) *Grading and backfilling.* Upon completion of backfilling and grading as required by the approved plan and prior to replacing topsoil and revegetation, the operator shall submit a report thereon, in duplicate, to the Mining Supervisor and request inspection for approval. Whenever it is determined by such inspection that the backfilling and grading has met the requirements of the approved plan, the Mining Supervisor shall recommend to the appropriate authorized officer release of an appropriate amount of the compliance bond for the area satisfactorily backfilled and graded.

(b) *Temporary abandonment.* In areas in which there are no current operations, but operations are to be resumed under an approved plan, the operator shall substantially backfill, fence, protect, or otherwise effectively close all surface openings, auger holes, areas prone to subsidence, and surface facilities or workings which are a hazard to people or animals. Conspicuous signs shall be posted prohibiting entrance of unauthorized persons. All such protective measures shall be maintained in a secure condition until such operations are resumed or permanently abandoned.

(c) *Permanent abandonment.* Before permanent abandonment of exploration or mining operations, all openings and excavations, including water discharge points, shall be closed or backfilled, or otherwise permanently dealt with in accordance with sound engineering practices and according to the approved plan. Drill holes, trenches, and other excavations for exploration, development or prospecting shall be abandoned in such a manner as to protect the surface and not to endanger any present or future underground operations or any deposit of oil, gas, other mineral resources, or ground water. Methods of abandonment shall be approved in advance by the Mining Supervisor in an approved plan, and may include backfilling, regrading, revegetation, cementing, and capped casing, or combinations of these, or other methods. Reclamation and clean-up of surface areas around and near permanently abandoned underground or surface mines, including, except where otherwise expressly provided in an approved plan, removal of equipment and structures related to the mining operation, shall commence without delay following cessation of mining operations. Areas affected by access roads will be graded, drained, and revegetated in accordance with the approved Mining Plan and therein approved post mining land use prior to bond release. In the event that access or haul roads are intended to remain after abandonment of the operation, pursuant to § 3041.2–2(f) (11) of this Subpart, they must be designed and constructed so as to be permanently stabilized using adequate drains, water barriers, and other practices.

(d) *Notice of abandonments release of bond.* (1) Not less than 30 days prior to cessation or abandonment of operations, the operator shall submit to the Mining Supervisor, in duplicate, a notice of his intention to cease or abandon operations, together with a statement of the exact number of acres affected by his operations, the extent and kind of reclamation accomplished, and a statement as to the structures and other facilities that are to be removed from or remain on the leased or licensed lands.

(2) Upon receipt of such notice, the Mining Supervisor and the appropriate authorized officer or officers shall promptly make a joint inspection to determine whether all operations have been completed in accordance with the terms and conditions of all leases, permits, and licenses, and with the requirements of approved operating plan. Where the operator has compiled with all such terms, conditions and requirements and the regulations of this Subpart the Mining Supervisor shall recommend to the appropriate authorized officer that the appropriate period of bonded liability be terminated.

(3) When the surface of lands in a lease permit or license is not owned by the United States the Mining Supervisor shall notify the surface owner and solicit and take into account his comments before recommending to the appropriate authorized officer that the period of such bond liability be terminated.

§ 3041.6 Reports.

(a) *Operations.* The operator shall file with the Mining Supervisor within 30 days after the end of each calendar year, and within 30 days after any temporary or permanent abandonment of operations, a report, in duplicate, containing the following with respect to his operations or the operations subject to such abandonment.

(1) Serial number of the lease, permit, or license and a description of the lands affected by operations.

(2) The number of acres disturbed and the number of acres reclaimed, including areas on which revegetation is being conducted.

(3) A description of the reclamation work remaining to be done on lands disturbed.

(b) *Revegetation.* (1) The operator shall file a report, in duplicate with the Mining Supervisor within 30 days after each planting is completed. The report shall: (i) Identify the lease or license; (ii) Show the types of planting or seeding, including mixtures and amounts; (iii) Show the date of planting or seeding; (iv) Identify or describe the planted or seeded lands; (v) Describe any surface manipulation, mulching, fertilization, and irrigation procedures, if any, and contain such other information as may be considered relevant.

(2) The Mining Supervisor and the authorized officer of the Federal surface managing agency shall, as soon as possible after each full growing season, jointly inspect and evaluate the revegetated areas to determine, in consultation with the surface owned if other than the United States, whether satisfactory vegetative growth has been established, or whether additional revegetation efforts should be ordered pursuant to 30 CFR 211.62(b)(2).

§ 3041.7 Notice of noncompliance: Revocation.

(a) The appropriate authorized officer and the Mining Supervisor shall have the right to enter upon the lands subject to this Subpart under lease or license, at any reasonable time.

(b) If an appropriate authorized officer discovers that an operator is conducting on lands subject to this subpart activities which are not in compliance with the requirements of a least or license, applicable regulations, or an approved plan and such activities do not threaten immediate and serious damage to the environment, resources, or the health and safety of the public, such authorized officer shall or, in the case of an appropriate authorized officer of any Federal surface managing agency not in the Department of the Interior, may refer the matter to the Mining Supervisor for remedial action pursuant to 30 CFR 211.72(a).

(c) If an appropriate authorized officer discovers that an operator is conducting on lands subject to this subpart activities which are not in compliance with the requirements of a lease or license, applicable regulations or an approved plan and such activities threaten immediate and serious damage to the environment, resources, or the health and safety of the public, and the Mining Supervisor is not available for appropriate remedial action pursuant to 30 CFR 211.72(c), such authorized officer may order the immediate cessation of such activities and shall promptly notify the Mining Supervisor. Upon such notification, the Mining Supervisor shall order immediate remedial action pursuant to 30 CFR 211.72(c).

(d) Failure of the operator to take action in accordance with an order for cessation of activities issued pursuant to paragraph (c) of this section, or with a written notice of noncompliance issued by the Mining Supervisor in accordance with the provisions of 30 CFR 211.72 shall be grounds for suspension of the operation and for possible cancellation of the lease, permit, or license in accordance with the regulations in 43 CFR 3500 of this Chapter.

§ 3041.8 Variances.

(a) Variances from compliance with the performance standards set forth in this subpart may be allowed as part of an approved mining plan under either of the following circumstances:

(1) Where an applicant states in a proposed plan or modification thereof that he cannot meet a performance standard specified in subparagraphs 3041.2–2(f) (2), (4), (6), (11), (12) or (13) of this subpart, he may request a variance from such performance standard where such variance would be compatible with the approved post mining land use, and shall support his request with appropriate information demonstrating the need therefor. The Mining Supervisor, after consultation with the appropriate authorized officer and the surface owner, if other than the United States, may approve or disapprove such variance, and shall advise the applicant and approve or disapprove the proposed plan or modification accordingly;

(2) Where an applicant proposes a post-mining land use that is substantially different from the land use immediately prior to any exploration and mining, the Mining Supervisor, with the concurrence of the appropriate authorized officer and after consultation with the surface owner, if other than the United States, may approve a mining plan containing variances from the performance standards of 30 CFR 211 and § 3041.2–2(f) hereof, provided that:

(A) After consultation with the appropriate land use planning agencies, if any, the proposed development is deemed to constitute an equal or better economic or public use of the affected land, as compared with the premining use.

(B) The granting of such variance is essential to achieving the proposed post mining land use.

(C) The applicant presents specific plans for the proposed post mining land use and appropriate assurances that such use will be: (i) Compatible with adjacent land uses; (ii) Supported by commitments and assured of investment from public agencies where appropriate; (iii) Practicable with respect to private financial capability for completion of the proposed development; (iv) Planned pursuant to a schedule made part of the proposed mining plan so as to integrate the mining operation and reclamation with the post mining land use; (v) Designed by qualified personnel in conformance with professional standards in order to assure the stability, drainage, and configuration necessary for the intended use of the site.

(D) To the degree possible and taking into account the subjective nature of the assessment, the applicant has considered the impact of the proposed land use on the aesthetic character of the area by consulting with inhabitants of the area, and utilizing expertise in the landscape and geomorphologic fields.

(b) Any application for a variance pursuant to paragraph (a) of this section shall demonstrate that any proposed disturbance of land above a highwall will facilitate compliance with the environmental protection and performance standards set forth in this subpart.

(c) Any application for variance pursuant to paragraph (a) of this section which proposes to place spoil or other material on the downslope below the bench used to mine an area classed as "steep slope," shall demonstrate to the satisfaction of Mining Supervisor that the permanent or temporary sediment loads in the receiving drainages and reclamation to the post-mining land use will not have significant adverse effects upon the aesthetics of the area.

(d) All variances granted pursuant to this section shall be reviewed by the Mining Supervisor and the appropriate authorized officer not more than three years after granting of the variance and incorporation in the mining plan, to ensure that the development is proceeding in accordance with the terms of the approved plan and the terms and conditions of any lease, permit, or license.

(e) An operator may apply for a variance pursuant to the provisions of paragraph (a) of this section only by submitting a new or revised mining plan to the Mining Supervisor for approval pur-

suant to the provisions of 30 CFR 211. Minor changes of operations which do not involve violations of the performance standards set forth in this subpart, and the granting of a variance pursuant to the description in § 3041.2–2(a)(2) of this subpart, will not be deemed to be subject to or require compliance with, the provisions of this section.

(f) If the Director of the GS determines that a decision to grant a variance would constitute a major Federal action significantly affecting the quality of the human environment, and that an environmental impact statement as required by Section 102(2)(C) of the National Environmental Policy Act has not been prepared with respect thereto, such a statement shall be prepared. If the Mining Supervisor grants a variance pursuant to this Section, he shall notify the appropriate land managing agency or land planning agency for the purpose of determining whether any changes may, as a result of such variance, be required in any land use plan.

PART 3500—LEASING OF MINERALS OTHER THAN OIL AND GAS: GENERAL

2. Section 3500.0–5 of 43 CFR is amended by revising paragraphs (h) and (i) as follows:

§ 3500.0–5 Definitions.

* * * * *

(h) *Public Bodies.* Public bodies are Federal and State agencies, municipalities, and rural electric cooperatives and similar types of organizations, and nonprofit corporations controlled by any of foregoing entities.

(i) *Government entities.* Governmental entities are Federal and State agencies, municipalities and subdivisions thereof, including any corporation primarily acting as an agency or instrumentality of a State, which produces electrical energy for sale to the public.

3. 43 CFR 3501.1–4 paragraphs (b)(1)(i) and (ii) are revised to read as follows:

§ 3501.1–4 Acreage limitations.

* * * * *

(b) * * *

(1) *Coal.* (i) No person, association, or corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation shall take, hold, own or control at one time Federal coal leases or permits on an aggregate of more than 46,080 acres in any one State, and in no case on an aggregate of more than 100,000 acres in the United States.

(ii) No person, association, or corporation holding, owning or controlling Federal coal leases or permits (by itself or through any subsidiary, affiliate, or person under common control with it) on an aggregate of more than 100,000 acres in the United States on August 4, 1976, shall be required to relinquish any lease or permit which it held on that date, but it shall not be permitted to take, hold, own or control any further Federal coal leases or permits until such time as its holding, ownership, or control of Federal leases or permits has been reduced below an aggregate of one hundred thousand acres within the United States.

* * * * *

4. 43 CFR 3501.1–5 is revised to read as follows:

§ 3501.1–5 Exceptions.

(a) *All leaseable minerals except coal.* No lands within the boundaries of the following areas in the public domain shall be leased under the provisions of this Part:

(1) National parks and monuments.

(2) Indian reservations.

(3) Incorporated cities, towns, and villages.

(4) Naval petroleum and oil shale reserves.

(5) Lands acquired under the act of March 1, 1911 (36 Stat. 961; 16 U.S.C. 513–519) known as the Appalachian Forest Reserve Act, or other acquired lands.

(b) *Coal.* No coal leasing shall be permitted on the public domain within the areas set forth in 43 CFR 3535.4.

5. 43 CFR 3501.2–1 is revised to read as follows:

§ 3501.2 Acquired lands.

§ 3501.2–1 Lands and deposits not subject to leasing.

(a) *All leaseable minerals except coal.* The following acquired lands are not subject to leasing:

(1) Lands acquired for the development of their mineral deposits;

(2) Lands acquired by foreclosure or otherwise for resale;

(3) Lands acquired as surplus under the Surplus Property Act of October 3, 1944 (58 Stat. 765; 50 U.S.C. 1611, et seq.);

(4) Lands in incorporated cities, towns, and villages;

(5) Lands in national parks and monuments; and

(6) Lands which are tide lands or submerged coastal lands within the Continental Shelf adjacent or littoral to any part of land within the jurisdiction of the United States.

(7) Lands in Naval Petroleum Reserves, The National Petroleum Reserve in Alaska, and oil shale reserves.

(b) *Coal.* No coal leasing shall be permitted on acquired lands within the areas set forth in 43 CFR 3525.4.

6. 43 CFR 3502.9 is amended to read as follows:

§ 3502.9 Public Bodies.

§ 3502.9–1 Coal.

(a) To obtain a coal lease on a tract set aside pursuant to 30 U.S.C. 201(a) a public body must submit:

(1) Evidence of the manner in which it is organized;

(2) Evidence that it is authorized to hold a lease or permit;

(3) Evidence that the action proposed has been duly authorized by its governing body; and

(4) A definite plan to produce energy solely for its own use or for sale to its members or customers (except for short-term sales to others).

(b) To obtain a license to mine coal pursuant to 30 U.S.C. 208, a municipality must submit:

(1) Evidence of the manner in which it is organized;

(2) Evidence that it is authorized to hold a license; and

(3) Evidence that the action proposed has been duly authorized by its governing body.

(c) To obtain a coal lease pursuant to 30 U.S.C. 352 on a tract of acquired lands set apart for military or naval purposes, a governmental entity must submit:

(1) Evidence of the manner in which it is organized, including the state in which it is located;

(2) Evidence that it is authorized to hold a lease;

(3) Evidence that the action proposed has been duly authorized by its governing body; and

(4) Evidence that it is producing electricity for sale to the public in the state where the lands to be leased is located.

(d) Where the material required in paragraphs (a), (b) and (c) of this section has previously been filed, a reference by serial number of the record in which it has been filed, together with a statement as to any amendments, will be accepted.

7. 43 CFR Subpart 3503 is amended by adding a new § 3503.3–3 to read as follows:

§ 3503.3–3 Coal.

(a) A coal lease shall require payment of a royalty of not less than 12½ per centum of the value of the coal removed from a surface mine.

(b) A coal lease shall require payment of a royalty of not less than 8 per centum of the value of the coal removed from an underground mine, except that the authorized officer may determine a lesser amount if conditions warrant.

(c) The value of coal removed from a mine is defined for royalty purposes in 30 CFR 211.63.

8. 43 CFR § 3503.3–1(b) is amended by revising paragraph (1) to read as follows:

§ 3503.3–1 General statement rentals.

* * * * *

(b) *Leases*—(1) *Coal.* Annual rental per acre or fraction thereof for coal leases shall not be less than 25 cents for the first year, not less than 50 cents for the second through fifth years and not less than $_____ for each and every year thereafter during the continuance of the lease.

(i) *Leases issued before August 4, 1976.* The rental paid for any year shall be credited against the royalties for that year until the lease is readjusted.

(ii) *Leases issued or adjusted after August 4, 1976.* Rental payments may not be credited against royalties.

§§ 3505.1–1, 3505.2–1 through 3505.2–4 [Reserved]

9. 43 CFR Subpart 3505 is amended by revoking and reserving §§ 3505.1–1, 3505.2, 3505.2–1, 3505.2–2, 3505.2–3, and 3505.2–4.

§§ 3511.2–1 and 3511.2–2 [Amended]

10. 43 CFR Subpart 3511 is amended by revoking and reserving paragraph (b)(1) of § 3511.2–1(b)(1) and § 3511.2–2.

PART 3520—PREFERENCE RIGHT AND COMPETITIVE LEASES

11. Section 3520.0–3 is revised as follows:

§ 3520.0–3 Authorities.

(a) *Public domain and acquired lands.* The Secretary is authorized to divide into leasing units and award leases of mineral lands and mineral deposits owned by the United States as set forth in § 3500.1–1 subject to the provisions of the Mineral Leasing Act, as amended and supplemented, and the Mineral Leasing Act for Acquired Lands as set forth in § 3500.0–3. Coal leasing is governed by the application procedures in 43 CFR Subpart 3525. Other leaseable minerals are covered by the procedures in 43 CFR Subpart 3521.

14. Section 3521.2–1 is revised as follows:

§ 3521.2–1 Application or Bureau motion.

(a) *Application.* (1) *Forms.* (i) Where filed and copies. An application for a lease must be filed in duplicate in the proper office. No specific form is required. Competitive-coal lease applications will be accepted only as authorized by 43 CFR Subpart 3525. The application should include the information set forth in (ii) to (v) of this subparagraph.

(ii) The applicant's name and address.

(iii) State of citizenship and qualifications.

(iv) A complete and accurate description of the lands for which the lease is desired. See § 3501.1–3.

(v) Evidence that the land is valuable for the mineral for which application is made, with a statement as to the character, extent and mode of occurrence of the deposit.

(2) *Additional Statements Required.* The contemplated investment for the development and purchase of equipment of a producing mine of a stated average daily output. Phosphate. To the extent such information is known to the applicant, a description of the phosphate and associated or related mineral deposits in the land based upon such actual examination as can be effected without an injury to the land or deposits (such examination shall not be deemed a trespass), giving nature and extent of the deposits; an outline in general terms of the proposed method of mining and processing the same; the proposed investment in mining operations thereon, and processing facilities therefor.

(3) Evidence showing in sufficient detail that:

(i) The amount of phosphate lands, Federal and non-Federal, held by him, together with the lands described in the application are necessary for his proposed development plan.

(ii) He intends to explore, mine and develop the property in good faith.

(iii) His proposed operations of the property will be in accordance with good conservation practice and this additional development is needed in order to supply an existing demand which cannot otherwise be reasonably met.

12. Section 3521.2–2 is revised as follows:

§ 3521.2–2 Qualifications.

(a) Compliance with Subpart 3502 is required.

(b) Bureau motion. (1) Bureau of Land Management responsibility.

(2) Geological Survey responsibility.

(c) *Leasing Units.* (1) *Phosphate.* If the authorized officer shall determine, after consultation with the Mining Supervisor of the Geological Survey that specific lands or deposits, not under an outstanding permit or application for preference right lease, which constitute an acceptable leasing unit are subject to phosphate lease, they will be offered for such lease on the terms and conditions to be specified in the notice of lease offer to the qualified person who offers the highest bonus by competitive bidding equal to the fair market value of the mineral deposit either at public auction or by sealed bids as provided in the notice of lease offer.

(2) *Solid (hardrock) minerals.* Any qualified person may file an application for the competitive offering of such deposits. Leasing units may not exceed, in reasonably compact form, 2,560 acres of land described in the manner required by this section. The authorized officer may prescribe a lesser area for any mineral deposit if the Geological Survey reports that such lesser area is adequate for a logical leasing unit.

(i) *Exception.* (a) *Phosphate.* In a notice for a phosphate lease, the detailed statement will set forth that the terms of minimum production will not be reduced or waived at the lessee's request as provided in § 3503.3–2(b)(3), (d), (e), or upon a satisfactory showing that market conditions are such that the lessee cannot operate except at a loss.

(b) *Asphalt.* All leases will be issued through competitive bidding only in the same manner as that provided for in Subpart 3120.

(c) *Publication.* Notice of offer of lands or deposits for lease by competitive bidding will be by publication once a week, or for such other period as may be deemed available, in a newspaper of general circulation in the county in which lands are situated.

13. The following sections are repealed and reserved: 43 CFR § 3520.0–4, 43 CFR § 3520.1–2, 43 CFR § 3520.1–3.

14. Title 43 CFR § 3520.2–1 is amended to read as follows:

§ 3520.2–1 Duration of Leases.

Leases shall be issued for indeterminate periods subject to readjustment or renewal at the end of the first 20-year period upon such terms and conditions as may be incorporated in each lease or prescribed in general regulations issued by the Secretary of the Interior, including covenants relative to mining methods; waste, period of preliminary development and minimum production (a) *Exceptions.* (1) *Asphalt.* Asphalt leases are issued for 10 years and so long thereafter as the lessee complies with the terms and conditions of the lease.

(2) *Solid (hardrock) minerals.* The lease will be issued for a period not exceeding 20 years the term to be determined upon the advice of the agency having jurisdiction over the surface and the U.S. Geological Survey.

(3) *Coal leases issued or readjusted after August 4, 1976.* The term of the lease shall be twenty years, and as long thereafter as the lessee is producing coal annually in commercial quantities.

§ 3524.1–1 [Reserved]

15. 43 CFR Subpart 3524 is amended by revoking and reserving § 3524.1–1.

16. 43 CFR 3524.2–1 is amended to read as follows:

§ 3524.2–1 Coal.

(a) *Application.* A lessee may obtain modification of his lease to include coal lands or coal deposits contiguous to those embraced in his lease if the authorized officer determines that it would be in the interest of the United States to do so. In no event shall the total area added by such modifications to an existing coal lease exceed one hundred sixty acres or the same number of acres as that in the original lease, whichever is less. The lessee shall file his application for modification in duplicate in the proper land office, describing the additional lands desired, and the needs and reasons for and the advantage to the lessee of such modification.

(b) *Availability*—(1) *Noncompetitive.* Upon determination by the authorized officer that the modification is justified and that the interest of the United States is protected, the lease will be modified without competitive bidding to include such part of the land or deposits as he shall prescribe.

(2) *Competitive.* If it is determined that the additional lands or deposits can be developed as part of an independent operation or that there is a competitive interest in them, they will be offered as provided in Subpart 3525.

(c) *Terms and conditions.* The authorized officer shall require changes in the terms and conditions of the original lease to make them consistent with the modified lease. Before a lease is modified under paragraph (a) or (b) of this section, the lessee shall file his written acceptance of the conditions imposed in the modified lease and the written consent of the surety under the bond covering the original lease to the modification of the lease and to extension of the bond to cover the additional land.

17. Subpart 3525—Energy Minerals Activity Recommendation System (EMARS) is renumbered, reorganized, and corrected to read as follows:

Subpart 3525—Energy Minerals Activity Recommendation System (EMARS)

Sec.
3525.0–2 Objectives.
3525.0–3 Authority.
3525.0–6 Policy.
3525.1 Competitive leases.
3525.2 Lands subject to leasing.
3525.2–1 Special leasing opportunities.
3525.2–2 Request for information on areas of interest.
3525.3 Applications: Short-term sales.
3525.3–1 Conditions of acceptance.
3525.3–2 Preliminary date required.
3525.4 Land Use Plans.
3525.5 Consent to leasing.
3525.5–1 Consultation with Federal surface managing agency.
3526.5–2 Consultation with Governors.
3525.6 Notice of lease sale.
3525.7 Consultation with Attorney General.
3525.8 Award of leases.
3525.9 Documentation.

Subpart 3525—Energy Minerals Activity Recommendation System (EMARS)

3525.0–2 Objectives.

The objectives of the Department's coal leasing process called Energy Minerals Activity Recommendation System (EMARS), include: the orderly and timely development of federally-owned coal; appropriate uses of the resources; effective environmental protection; and a fair market return to the public for the resources sold. The program consists of three principal elements: nominations; multiple resource land-use planning; and environmental assessment. Nominaions provide the first indication of tracts which should or should not be leased. The nominations received are then compared with resource values through the Bureau's land-use planning process, including Management Framework Plans. From these phases, proposed tract recommendations will be made and environmental assessment will be undertaken on the proposed coal lease tracts. The integration of these three elements, i.e., nominations, multiple resource land-use planning, and environmental assessment—each of which will be undertaken with State and public participation—will produce specific coal lease recommendations for Secretarial decision.

§ 3525.0–3 Authority.

(a) *Acts.* (1) The Act of February 25, 1920, 41 Stat. 437, as amended by the Act of June 3, 1948, 62 Stat. 248, the Act of September 9, 1959, 73 Stat. 490, the Act of August 31, 1964, 78 Stat. 710, and the Act of August 4, 1976, 90 Stat. 1083, 30 U.S.C. 201(a).

(2) The Act of August 7, 1947, 61 Stat. 913, and the Act of August 4, 1976, 90 Stat. 1090, 30 U.S.C. 352.

§ 3525.0–6 Policy.

It is the policy of the Department to encourage the development of Federally-owned coal, where such development is authorized, through a program that will provide for the protection, orderly development and conservation of Federal mineral and nonmineral resources in a manner that will avoid, minimize or correct adverse impacts on society and the environment resulting from coal development, without undue duplication or administrative delay by Federal officers. It is also the policy of the Department to issue leases for coal only where reclamation of the affected lands to the standards set forth in 43 CFR Part 3040 is attainable and assured and a reclamation program will be undertaken as contemporaneously as practicable with operations.

§ 3525.1 Competitive leases: Procedures.

(a) *Establishment of leasing tracts.* General coal land or deposits shall be divided into suitable leasing tracts and leased competitively. The Energy Minerals Activity Recommendation System (EMARS) shall be used to identify tracts suitable for leasing through nominations and multiple-use land management planning. All competitive lease sales, except those that qualify under the short-term leasing criteria, will be on Bureau motion.

(b) *Selection of proposed tracts.* (1) *Bureau Motion.* Proposed tracts will be selected by the Bureau of Land Management and United States Geological Survey field offices, with participation from affected State governments, and other surface management agencies, if other than the Bureau of Land Management, based upon relevant information including information from the appropriate land-use plan, from nominations and from competitive coal lease applications on file.

(2) *Selection of Proposed Tracts: Short-term Sale.* Proposed tracts for short-term sales will be selected using the same criteria as Bureau motion tracts. Prior to selecting a proposed short-term tract the Bureau must determine that the application meets the short-term leasing criteria.

(3) No lands may be included in a proposed tract unless: (i) the land is included in a completed land-use plan and leasing is compatible with the plan; (ii) the lands have been included in a known recoverable coal resource area (KRCRA);

(iii) the lands have been included in a nomination or have been identified by BLM as potential leasing tracts or included in a short-term lease application.

(4) *Tract Selection Factors.* The selection of proposed lease tracts will include consideration of such factors as: depth, quality, thickness and extent of the coal resource; water resource availability; relationship to existing communities; potential impacts on economic structure (e.g., employment, available services, etc.); service and access corridors; aesthetic qualities such as scenic, cultural, Wildlife, and vegetative values; rehabilitation potential and Coal Resources Regulations Guideline No. 1 (41 FR 43722).

(c) *Compliance with NEPA.* The National Environmental Policy Act will be complied with as follows: If several proposed leasing units have significant related characteristics and would sustain similar or related environmental impacts, as determined by the Secretary, they may be covered by a single regional environmental impact statement. Where leasing actions are adequately covered in a regional impact statement, no additional impact statement need be prepared. A public hearing will be held after publication of a draft regional environmental impact statement. An environmental assessment record or an impact statement, as appropriate, will be prepared for proposed leasing actions not included in a regional impact statement. The Department will provide public notice and an opportunity for a public meeting on an environmental assessment record for a coal leasing proposal that indicates that an environmental impact statement is not required.

(d) *Technical examinations.* A technical examination in accordance with the procedures in 43 CFR 3041.2 and 3041.2–1 will be completed on each unit after completion of the final environmental impact statement or environmental assessment to identify specific reclamation requirements and tracts requiring special environmental consideration and to prepare bonding requirements and stipulations to minimize impacts upon-the environment and other resources, lands uses, or programs. Reclamation requirements will be imposed in accordance with 43 CFR 3041. The technical examination will include an evaluation of the proposed leasing unit to balance the value of the coal against the cost of mining, the cost of mitigation of environmental damage, and the significance of unmitigable damages. The Bureau will obtain from the Geological Survey an evaluation and comparison of the effects of recovering coal by deep mining, by surface mining, and by other methods to determine which method or methods achieves the maximum economic recovery of the proposed tract.

(e) *Recommendation of tentative coal lease tracts.* (1) After the BLM has completed the actions required by paragraphs (a)–(d) of this section, after State government and surface management agency consultation, and after holding a public hearing, on the record, in the area which may be affected by the proposed coal lease sale, the State Director will recommend suitable tentative coal lease tracts to the Director. The Director will consolidate approved field recommendations into a proposed Coal Lease Sale Schedule for review and approval by the Secretary.

(2) The Director's recommendation, and the Secretary's final approval, shall include a written synopsis of earlier analyses which evaluates and compares:

(i) The effects of recovering coal by deep mining, by surface mining and by any other method to determine which method or methods or sequence of methods achieves the maximum economic recovery of the coal within the proposed leasing tract, and

(ii) The effects which mining the proposed lease might have on an impacted community or area, including impacts on the environment, on agriculture and other activities, and on public services.

(f) Qualified applicants. Leases may be issued to qualified applicants listed in Subpart 3502 of this chapter unless:

(1) The qualified applicant, or any subsidiary, affiliate, or person controlled by or under the common control of the qualified applicant holds a lease or leases to coal deposits issued by the United States and has held the lease for 10 years and is not producing coal in commercial quantities.

Exceptions. A lessee is not disqualified from holding a lease if either production is interrupted by strikes, the elements, or casualties not attributable to the lessee, or the Secretary has suspended the requirement of continued operation upon payment of advance royalties.

(i) The 10-year period referred to in paragraph (a) of this section shall begin on August 4, 1976, or the date the lease is issued, whichever is later.

(ii) For the purpose of this paragraph, production of coal in commercial quantities means production adequate to meet the requirement for continuous operation as defined in § 3500.0–5(g) of this chapter; or

(2) The qualified applicant holds or controls more than 46,080 acres of Federal coal leases in any one state or 100,000 acres of Federal coal leases in the entire United States.

§ 3525.2 Lands subject to leasing.

(a) The Secretary may issue coal leases on all lands owned by the United States except lands in the:

(1) National Park System;

(2) National Wildlife Refuge System;

(3) National Wilderness Preservation System;

(4) National System of Trails;

(5) Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act;

(6) Incorporated cities, towns and villages; and

(7) Tide lands, submerged coastal lands within the Continental Shelf adjacent or littoral to any part of land within the jurisdiction of the United States.

(8) Lands acquired by the United States for the development of mineral deposits, for foreclosure or otherwise for resale, or reported as surplus property pursuant to the provisions of the Surplus Property Act of 1944.

(9) Naval Petroleum Reserves, The National Petroleum Reserve in Alaska, and oil shale reserves.

(b) (1) The Secretary may issue coal leases with the consent of the Secretary of Defense on acquired lands set apart for military or naval purposes only if the leases are issued to a governmental entity, including any corporation primarily acting as an agency or instrumentality of a State, which

(i) Produces electrical energy for sale to the public; and

(ii) Is located in the State in which the leased lands are located.

(2) A government entity is located in a State if its production facilities are in that State, and the coal produced from the lease will be used in the State.

(c) The regulations in Subpart 3525 of Title 43 CFR do not apply to the leasing and development of coal deposits owned by Indians and subject to the trust protection of the United States. Regulations governing those deposits are found in 25 CFR Chapter I.

§ 3525.2–1 Special leasing opportunities.

(a) The Secretary shall, under the procedures established under this subpart, reserve and offer a reasonable number of coal lease tracts within competitive lease sales each year as special leasing opportunities. Except for the limitation on bidding contained in paragraph (b) of this section, all of the requirements of this subpart apply to special leasing opportunities including the requirement that the coal be leased at its fair-market value.

(b) Only public bodies, including Federal agencies, rural electric cooperatives, or non-profit corporations controlled by any of these entities which have a definite plan to produce energy for their own use or for sale of their members or customers will be eligible to bid for leases designated as special leasing opportunities. Evidence of qualification to bid for leases designated as special leasing opportunities must be filed with the Department at least 60 days prior to a sale.

(c) The Secretary may designate certain coal lease tracts as special leasing opportunities only if a public body has requested, in the nomination process or elsewhere, that the procedures of this section apply.

(d) Leases issued under this Section may be assigned only to another public body.

§ 3525.2–2 Request for information on areas of interest.

(a) *Purpose.* This section establishes a procedure by which industry, the general public, and State and local governments can inform the Department of the Interior of their views on coal leasing in particular areas. The Department will incorporate the information it receives into its internal planning processes for Federal coal leasing tract selections. Except for short-term leasing applications, nominations are the primary source of information on the need for additional coal leasing.

(b) *Description of process.* The Director will request information on an annual basis, or as necessary. Any person may file with the Bureau, a statement with supporting information, asking the Director to make a request for nominations. The Bureau is not required to act on the statement. The Request for Information on Areas of Interest will consist of two types.

(1) *Industry nominations.* Nominations from industry of tracts of land that the Department should or should not make available for coal leasing including, as appropriate, statements describing why the tracts should or should not be leased.

(2) *Areas of public concern.* Concurrently with Industry Nominations, State and local governments and the general public are requested to submit Areas of Public Concern covering tracts of land that the Department should or should not make available for coal leasing including, as appropriate, statements describing why the tracts should or should not be leased.

(c) *Use of nominations.* Information obtained through the nominations process will be analyzed and compared with multiple resource opportunities identified in the land-use planning process. Proposed coal lease tracts will then be developed on the basis of nominations and multiple resource information.

(d) *Description of nominations.* All nominations or statements of information for or opposed to leasing shall: (1) (i) Describe the lands by legal subdivisions, section, township, and range; or in the case of land covered only by protracted surveys, by section, township, and range according to an approved protraction diagram; or

(ii) Use the Bureau of Land Management's Surface/Minerals Management Quads (minerals ownership maps) to indicate nominated areas. A readily discernible line on these maps conforming to legal subdivision and section lines will be accepted as the description required in paragraph (d)(1)(i) of this section. The maps are available for sale at BLM State and most District Offices.

(2) Describe reasonably compact areas, which will be assumed to include all Federal coal within the boundaries described, and may not exceed 25,000 acres.

(e) *Multiple nominations.* If a person submits two or more nominations for leasing or two or more nominations against leasing, choices shall be ranked in order of importance and shall be numbered consecutively. Nominations should be ranked on a nationwide basis.

(f) *Inspection and copying.* The procedures in 43 CFR Part 2 govern the public inspection and copying of information submitted under this section.

(g) *Notice of requests for nominations on areas of interest.* (1) Notice of each Request for Information on Areas of Interest will be published in the FEDERAL REGISTER and in a newspaper(s) of general circulation in the State affected and will specify the area or areas covered by the call, the size and ranking of nominations, the period of time within which to submit nominations, and the addresses to which the nominations are to be submitted.

(2) *Lands Eligible for Nominations.* Nominations will be accepted only for those lands that are eligible for coal leasing. Lands not subject to leasing include (i) lands listed in § 3525.5; (ii) lands withdrawn from coal leasing or otherwise not subject to the provisions of the Mineral Leasing Act; (iii) land subject to a coal lease, permit or preference right lease application; and (iv) areas designated by BLM as primitive areas.

(h) *Areas nominated in national forest system.* The authorized officer will notify the Secretary of Agriculture of all lands nominated for leasing that are in the National Forest System.

(i) *Meeting on Nominations.* Prior to the selection of proposed tracts, the Bureau will hold a public meeting on nominations if the public has not had an opportunity to comment on the nominations in the land-use planning process.

§ 3525.3 Applications: Short-term sales.

§ 3525.3–1 Conditions of acceptance.

Applications for coal leases will be accepted only if the applicant shows that (a) the coal is needed to maintain an existing mining operation, or (b) the coal is needed as a reserve for production in the near future.

§ 3525.3–2 Preliminary data.

(a) Any application for coal lease filed pursuant to the regulations in this Chapter shall contain preliminary data to assist the authorized officer in making a technical evaluation and environmental assessment as described in § 3041.2.

(b) Such preliminary data shall include: (1) Such map, or maps, as may be available from State or Federal sources, on which shall be shown the topography of the land applied for, and on which the applicant shall show physical features and natural drainage patterns and existing roads, vehicular trails, and utility systems; the location of any proposed exploration operations, including seismic lines, drill holes, to the extent known, the location of any proposed mining operations and facilities, trenches, access roads or trails, and support facilities incidental thereto, including the approximate location and aerial extent of the areas to be used for pits, overburden, and tailings; and the location of water sources or other resources which may be used in the proposed operations or facilities incidental thereto.

(2) A narrative statement, including: (i) The anticipated scope, method, and schedule of exploration operations, including the types of exploration equipment to be used.

(ii) The method of mining anticipated, including the best available estimate of the mining sequence and production rate to be followed.

(iii) The relationship, if any, between the mining operations anticipated on the lands applied for and existing or planned mining operations, or facilities incidental thereto, on adjacent Federal or non-Federal lands.

(iv) A brief description, including suitable maps or aerial photographs as appropriate, of the existing land use within and adjacent to the lands applied for; and of known geologic, visual, cultural, or archaeological features; and the known habitat of fish and wildlife, particularly threatened and endangered species, that may be affected by the proposed or reasonably anticipated exploration or mining operations.

(v) A brief description of the proposed measures to be taken to maximize, control, or prevent fire, soil erosion, pollution of surface and ground water, damage to fish and wildlife or other natural resources, air and noise pollution, and hazards to public health and safety; to reclaim the surface; and to otherwise meet applicable laws and regulations, which the applicant wishes to have considered by the authorized officer.

(c) The applicant shall not enter upon the land for any operational purpose, except for casual use, without prior authorization. Casual use, as used in this section, means activities which do not cause significant surface disturbance or damage to lands, resources, and improvements, such as activities which do not include (1) the use of heavy equipment or explosives, or (2) vehicular movement off established roads and trails which causes such disturbance.

(d) The authorized officer, after reviewing the preliminary data contained in an application, and at any time during a technical examination and environmental assessment, may request additional information from the applicant.

§ 3525.4 Land-use plans.

(a) *Preparation of a land-use plan.* The Secretary may not issue a lease for coal deposits unless the lands containing coal deposits have been included in a comprehensive land-use plan and the sale is compatible with the plan. A comprehensive land-use plan shall:

(1) Use and observe the principles of multiple use and sustained yield set forth in the Federal Land Policy and Management Act of 1976;

(2) Use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;

(3) Give priority to the designation and protection of areas of critical environmental concern;

(4) Rely, to the extent it is available, on the inventory of the public lands, their resources, and other values;

(5) Consider present and potential uses of the public lands;

(6) Consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values;

(7) Weigh long-term benefits to the public against short-term benefits;

(8) Provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans; and

(9) Assess the amount of coal deposits contained in the land and shall, based on available information, identify the amount of coal that is recoverable by deep mining operations and the amount that is recoverable by surface mining operations.

(b) Planning responsibilities.

(1) The Bureau of Land Management will prepare plans for land under its jurisdiction in accordance with its procedures.

(2) The Department of Agriculture and other federal agencies with jurisdiction over lands where there is interest in coal mining will prepare land-use plans for those lands.

(3) If the Secretary finds that because of non-Federal interest in the surface, or because the coal resources are insufficient to justify the costs of a Federal comprehensive land use-plan, in an area, he may lease lands in that area if the lands containing the coal deposits have been included in either a comprehensive land-use plan prepared by the State within which the lands are located, or a land-use analysis prepared by the Secretary of the Interior.

(c) *Consultation and public hearing.* A plan will not be adequate for the purposes of this section unless the agency that prepares the plan has:

(1) Consulted appropriate State and local governments and the general public during the preparation of a plan; and

(2) Provided an opportunity for a public hearing on a proposed plan prior to its adoption if requested by any person who may be adversely affected by the adoption of the plan.

(d) *Hearing Requirements.* The agency that conducts the hearing shall: (1) Publish a notice of the hearing in a newspaper of general circulation at least once in each of two consecutive weeks in the affected geographical area;

(2) Provide an opportunity for testimony by anyone who desires to do so;

(3) Compile a complete transcript of the hearing if a request for a transcript is filed, in writing, at least 10 days prior to the hearing;

(4) Plans adopted prior to August 4, 1976 will be considered adequate if the public had an adequate opportunity to comment on the plan prior to its adoption, even if a formal hearing was not held.

(e) Availability of land use plans. The Bureau's land-use plan and multiple land-use management plans of other Federal agencies, as appropriate, will be available for inspection at the appropriate Bureau or agency office. Upon the request of the Governor of a State affected by coal lease actions, the State Director will make available for his review the land-use plans for that State, and, as appropriate, adjacent States.

§ 3525.5 Consent to leasing.

§ 3525.5–1 Consultation with Federal surface managing agency.

(a) The Secretary may not issue leases for lands the surface of which is under the jurisdiction of any agency other than the Department of the Interior unless the Federal agency has consented to the issuance of the lease, but any lease shall contain terms and conditions as the head of the agency may prescribe for the use and protection of the nonmineral interests in those lands.

(b) The Secretary must accept the conditions prescribed by the surface managing agency, but may prescribe additional terms and conditions that are consistant with the terms proposed by the surface managing agency to protect the interests of the United States and to safeguard the public welfare.

§ 3525.5–2 Consultation with Governors.

(a) *General consultation.* Prior to offering a coal lease for competitive sale, the Secretary shall consult the Governor of the State in which the land to be leased is located.

(b) *Consultation for surface mining proposals in national forest.* (1) Prior to offering a coal lease in a National Forest where the method of mining which achieves maximum economic recovery of the coal resources is surface mining, the Secretary shall submit the lease pro-

posal to the Governor of the State in which the coal deposits are found.

(2) The Secretary may not issue a lease in a National Forest for a lease which the method of mining that achieves maximum economic recovery is surface mining until at least 60 days after he notifies the Governor of the lease proposal.

(3) If the Governor fails to object to the lease proposal in 60 days, the Secretary may issue the lease. If within the sixty-day period the Governor notifies the Secretary, in writing, that he objects to the lease proposal, the Secretary may not approve the lease for six months from the date the Governor objects to the lease.

(4) The Governor may, during this six-month period, submit a written statement of reasons why the lease should not be issued, and the Secretary shall, on the basis of this statement, reconsider the lease proposal.

§3525.6 Notice of lease sale.

(a) *Notice of lease sale.* (1) Publication. Prior to the lease sale, the Authorized Officer shall publish in the FEDERAL REGISTER and in a newspaper(s) of general circulation in the county affected by the sale a notice of the proposed sale. The newspaper notice shall be published once a week for three consecutive weeks.

(2) The notice will show the time and place of sale whether the sale will be at public auction or by sealed bids, the description of the land, and the place where a detailed statement of the terms and conditions of the lease offer and the obligations of the successful bidder to pay for publication of that notice may be obtained.

(3) It will also contain a statement that sealed bids may not be modified or withdrawn unless the modifications or withdrawals are received prior to the time fixed for opening of the bids.

(4) The detailed statement will set forth the terms and conditions of the sale, including the manner in which the bids may be submitted.

(5) The detailed statement will also contain a warning to all bidders against violation of 18 U.S.C. 1860, which prohibits unlawful combination or intimidation of bidders.

(6) The detailed statement will specify that the Government reserves the right to reject any and all bids. If the sale is by public auction, the statement of terms and conditions of the sale will also specify that sealed bids may be submitted. If any bid be rejected, the deposit will be returned.

(7) The detailed statement will also contain a request for comments on the fair market value of the tracts to be sold. The notice shall state the address to where the comments on fair market value should be submitted.

§ 3525.7 Consultation with Attorney General.

(a) Subsequent to a lease sale, but prior to issuing a lease, the Secretary shall notify the Attorney General of the proposed lease issuance, the proposed lessee, normally the high bidder in a sale, and other relevant information. The Secretary may not issue a lease until 30 days after he notifies the Attorney General.

(b) The Secretary shall not issue the lease to the proposed lessee if, during this 30-day period, the Attorney General notifies the Secretary that the proposed lease issuance would create or maintain a situation inconsistent with the antitrust laws, which means:

(1) The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890 (15 U.S.C. 1 et seq.), as amended;

(2) The Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (15 U.S.C., et seq.), as amended;

(3) The Federal Trade Commission Act (15 U.S.C. 41, et seq.), as amended;

(4) Sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; or

(5) The Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a)."

(c) If the Attorney General notifies the Secretary that a lease should not be issued the Secretary may:

(1) Reject all other bids or may request the Attorney General in accordance with paragraph (a) of this section to consider the issuance of the proposed lease to the next qualified high bidder; or

(2) Issue the lease if, after he conducts a public hearing on the record in accordance with the Administrative Procedures Act, he determines that: (i) Issuance of the lease is necessary to carry out the purposes of the Federal Coal Leasing Amendments Act of 1975; (ii) Issuance of the lease is consistent-with the public interest; and (iii) There are no reasonable alternatives to the issuance of the lease that are consistent with the Federal Coal Leasing Amendments Act of 1975, the antitrust laws and the public interest.

(d) If the Attorney General does not give a written reply to the notification in paragraph (a) of this section within 30 days, the Secretary may issue a lease without waiting for the advice of the Attorney General.

§ 3525.8 Award of leases.

(a) *Pre-sale evaluation.* Before the lease sale, the U.S. Geological Survey, considering public comments on fair market value and available geotechnical, engineering and economic data, shall make a coal resource economic evaluation of each tract to be sold and shall submit it to the authorized officer.

(b) *Notification of award.* Bids will be received only until the hour on the date specified in the notice of competitive leasing. All bids submitted after the hour will be rejected. The authorized officer will read all sealed bids. If the procedure calls for sealed bids followed by oral bids the oral bidding will begin at the level of the highest sealed bid received. After the oral bidding has ceased, the highest bid will be announced. The high bidder will be required to comply with 43 CFR § 3521.2–4 and 43 CFR § 3521.4–2. No decision to accept or reject any bid will be made at this time. The sale will be adjourned and the sale panel will convene to determine if the bid adequately reflects fair market value considering, among other factors, comments on fair market value. The recommendations of the panel will be sent to the authorized officer who, after the Department complies with § 3525.8 of this subpart, will make the final decision to accept a bid or reject all bids, as soon as possible after the sale date. The successful bidder will be notified in writing. The Department reserves the right to reject any and all bids but will not accept any bids which are less than the fair market value of the tract. The Department also reserves the right to offer a lease to the second high bidder if the successful bidder fails to execute the lease.

(c) *Intertract competition.* The use of bidding competition between tracts (intertract bidding) is hereby authorized when and if the Bureau of Land Management and the U.S. Geological Survey determine it is needed in the public interest. The authorization to utilize intertract competition does not preclude the use of any other form of competitive bidding procedure.

(d) *Compliance with notice of competitive lease offer.* (1) *Action by successful bidder.* Four copies of the lease will be sent to the successful bidder, who will be required not later than the 15th day after receipt thereof, or the 30th day after the date of the sale, whichever is later, to execute them, pay the balance of the bonus bid or the first payment of the deferred bonus payment on the first year's rental, and file a bond as required by Subpart 3504.

(2) *Death of bidder.* If the bidder dies before the lease is issued, there must be compliance with § 3502.8 of this chapter.

(e) *Deferred Bonus Payment Policy.* All competitive coal lease sales shall be held on a deferred bonus payment basis. In a deferred bonus payment the lessee shall pay the bonus payment in five (5) equal installments: The first installment shall be made as required by § 3525.8(d)(1). The balance shall be paid in equal annual installments due and payable on the first four anniversary dates of the lease. If a lease is relinquished or otherwise terminated, the unpaid remainder of the bid shall be immediately payable to the United States.

§ 3525.9 Documentation.

(a) *Preparation of documents.* Except as may be otherwise expressly set forth in this subpart, decisions and determinations of any appropriate authorized officer acting pursuant to this subpart with respect to issuance of leases, shall be in writing, shall set forth with reasonable specificity the facts and the rationale upon which such decisions or determinations are based, and shall be available for public inspection during normal business hours at the offices of such officer.

(b) *Availability of documents.* Except for documents which are subject to withholding under the Freedom of Information Act, any application for a lease, to-

gether with the proposed terms, conditions, and special stipulations and any preliminary data submitted under this subpart shall be available for public inspection in the appropriate BLM office. To allow for such public inspection, a notice of the availability of any such documents shall be prepared by the appropriate officer of the BLM and promptly posted at his office and mailed to the surface owner, if other than the United States, to appropriate Federal and State agencies, and to the clerk or other appropriate officer in the county in which the proposed operation is located for posting or publication in accordance with the procedures of that office. No final action with respect to such documents shall be taken for a period of 30 days after such posting and mailing. A copy of such notice shall be published by the applicant in a local newspaper of general circulation in the locality of the proposed operation at least once a week for four consecutive weeks.

(c) *Transcript of hearings.* Where a hearing under this subpart has been held on the record, a complete transcript, of the hearing, including any written comments submitted for the record, shall be kept and maintained available to the public during normal business hours at the appropriate Federal office under whose auspices such meeting is conducted, and shall be furnished at cost to any interested party.

GUY R. MARTIN,
Assistant Secretary of the Interior.

MAY 9, 1977.

[FR Doc.77-13899 Filed 5-13-77;8:45 am]

GPO 841-516

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2419]

PART 3830—LOCATION OF MINING CLAIMS

Recordation of Mining Claims and Filing Evidence of Annual Assessment Work or Notice of Intention to Hold Mining Claims

Part 3830 is amended by adding Subpart 3833 to read:

Subpart 3833—Recordation of Mining Claims and Filing Proof of Annual Assessment Work or Notice of Intention To Hold Mining Claims

Sec.
3833.0–1 Purpose.
3833.0–2 Objectives.
3833.0–3 Authority.
3833.0–5 Definitions.
3833.1 Recordation of mining claims.
3833.1–1 Manner of recordation—National Park System.
3833.1–2 Manner of recordation—other Federal lands.
3833.1–3 When recordation not required.
3833.2 Evidence of assessment work/notice of intention to hold claim.
3833.2–1 When filing required.
3833.2–2 Form—evidence of assessment work.
3833.2–3 Form—notice of intention to hold claim.
3833.2–4 When evidence or notice not required.
3833.3 Notice of transfer of interest.
3833.4 Failure to file.
3833.5 Effect of recording and filing.

§ 3833.0–1 Purpose.

One purpose of these regulations is to establish procedures for the recordation in the proper BLM office of unpatented mining claims, mill sites, or tunnel sites on Federal lands, and for the filing in the same office of evidence of performance of annual assessment work or of a notice of intention to hold an unpatented mining claim. Another purpose is to notify the proper BLM office of the transfer of an interest in unpatented mining claims, mill sites or tunnel sites.

§ 3833.0–2 Objectives.

An objective of these regulations is to determine the number and location of unpatented mining claims, mill sites, or tunnel sites located on Federal lands to assist in the management of those lands and the mineral resources therein. Other objectives are to remove the cloud on the title to these lands because they are subject to mining claims that may have been abandoned and to keep the BLM abreast of transfers of interest in unpatented mining claims, mill sites or tunnel sites. These regulations are not intended to supersede or replace existing recording requirements under State law, except when specifically changed by the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701), and are not intended to make the BLM office the official recording office for all ancillary documents (wills, liens, judgments, etc.) involving an unpatented mining claim, mill site or tunnel site.

§ 3833.0–3 Authority.

(a) Subsections (a) and (b) of section 314 of the Act require the recordation of unpatented mining claims and the filing of information concerning annual assessment work performed or a notice of intention to hold such a claim in the proper BLM office within specified time periods. Subsection (c) sets forth the consequences of the failure to file such information or documents within the time limits prescribed.

(b) Section 8 of the Act of September 28, 1976 (16 U.S.C. 1901–1912), requires that all unpatented mining claims within the boundaries of the National Park System shall be recorded with the Secretary within one year after the date of the Act and provides penalties for failure to record.

(c) Section 2319 of the Revised Statutes (30 U.S.C. 22) provides that the exploration, location, and purchase of valuable mineral deposits shall be "under regulations prescribed by law," and section 2478 of the Revised Statutes, as amended (43 U.S.C. 1201), provides that those regulations will be issued by the Secretary.

(d) The Secretary has general responsibility and authority concerning public lands under 43 U.S.C. 2 and section 310 of the Act.

§ 3833.0–5 Definitions.

As used in this Subpart:

(a) "The Act" means the Federal Land Policy and Management Act of 1976 (Pub. L. 94–579; 90 Stat. 2743).

(b) "Unpatented mining claim" means a lode mining claim or a placer mining claim located under the General Mining Law of 1872, as amended (30 U.S.C. 21–54), for which a patent under 30 U.S.C. 29 and 34 CFR 3860 has not been issued.

(c) "Mill site" means any land located under 30 U.S.C. 42.

(d) "Tunnel site" means a tunnel located pursuant to 30 U.S.C. 27.

(e) "Owner" means any person who holds a recorded possessory interest in all or any part of an unpatented lode or placer mining claim, mill site, or tunnel site whether such interest was obtained by location, purchase, gift, inheritance, or other means recognized under law for transfer of the right of possession and enjoyment recognized in the holder of the claim or claims under the General Mining Law of 1872, as amended, *supra*.

(f) "Federal lands" means any land or interest in land owned by the United States as defined by subparagraph (e) of section 103 of the Act and any other land or interest in land owned by the United States which is subject to location and purchase under the General Mining Law of 1872, *supra*., and 43 CFR Subpart 3811 including, but not limited to, those lands within units of the National Park System, forest reservations within the National

Published in 42 F.R. 5298, January 27, 1977 - Effective January 20, 1977.

Circular Distribution List

Forest System and wildlife refuges within the National Wildlife Refuge System.

(g) "Proper BLM office" means the Bureau of Land Management State Office having jurisdiction over the area in which the lands subject to the regulations are located. (See 43 CFR 1821.2–1 for office location and area of jurisdiction.)

(h) "Date of location" means the date indicated on the notice of location or discovery posted on an unpatented mining claim, mill site, or tunnel site under state law, or, if state law does not require the posting of a notice of location or discovery for unpatented mining claims or tunnel sites the date that the notice of location of the claim was posted in accordance with 43 CFR Parts 3830 and 3840 or if state law does not require the posting of a notice for mill sites, the date that the person who located the site began using or occupying the site for mining or milling purposes.

(i) "Official record of the notice or certificate of location" means the official document of recordation and all accompanying maps, papers or other documents filed for record with the recorder or other officer now authorized to record such instruments under state law in the local jurisdiction where the unpatented mining claim, mill site, or tunnel site is located and any amendments thereof which may change or alter the location of the claim or site.

§ 3833.1 Recordation of mining claims.

§ 3833.1–1 Manner of recordation—National Park System.

The owner of an unpatented mining claim, mill site, or tunnel site located within the boundaries of units of the National Park System must comply with the requirements of the Notice of October 13, 1976, entitled "Claimants of Mining Claims," published on October 20, 1976, at 41 FR 46357, and the requirements of Park Service regulations concerning recordation in 36 CFR Part 9, and copies of all material received by the National Park Service pursuant to that Notice will be given by the Park Service to the proper BLM office. Compliance with the requirements of that Notice will be deemed full compliance with the requirements of section 314 of the Act for all owners of unpatented mining claims, mill sites, or tunnel sites within the boundaries of any unit of the National Park System.

§ 3833.1–2 Manner of recordation—other Federal lands.

(a) The owner of an unpatented mining claim, mill site, or tunnel site located on or before October 21, 1976, on Federal land, excluding land within units of the National Park System, shall file (file shall mean being received and date stamped by the proper BLM office), before October 22, 1979, in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site filed under state law, or, if state law does not require the recordation of a notice or certificate of location of the claim or site, a certificate of location containing the information in paragraph (c) of this section.

(b) The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site filed under state law or, if the state law does not require the recordation of a notice or certificate of location of the claim or site, a certificate of location containing the information in paragraph (c) of this section.

(c) The copy of the notice or certificates filed in accordance with paragraphs (a) and (b) of this section shall be supplemented by the following additional information unless it is included in the copy:

(1) The name or number of the claim, or both, if the claim has both;

(2) A reference by book and page or other identification number to the county or other local public record of the notice or certificate and, if amended, of the last recorded amendment thereof;

(3) The name, and current mailing address, if known, of the owner or owners of the claim;

(4) The type of claim or site;

(5) The date of location;

(6) For all claims or sites located on surveyed or unsurveyed lands, a legal description shall be furnished. This description shall recite the approximate location of all or any part of the claim or site with a 160 acre quadrant of a section (quarter section) or sections, if more than one is involved. In addition, there must be funished the township, range, meridian and state obtained from an official survey plat or other U.S. Government map showing either the surveyed or protracted U.S. Government grid, whichever is applicable;

(7) A map with a scale of not less than ¼ inch to a mile showing the survey or protraction grids on which there will be depicted the location of the claim or site. Contiguous claims or sites and groups of claims or sites in the same general area may be depicted on this single map so long as the individual claims or sites are clearly identified;

(8) If the individual claim or site or group of claims or sites are located on unsurveyed land and it is not a part of or included in the notice or certificate, there shall also be furnished either a narrative or a sketch describing the individual claim or site or group of claims or sites in reference to some topographic, hydrographic or man-made feature. Such narrative description or sketch shall set forth the boundaries and position of the individual claim or site or group of claims or sites with such accuracy as will permit the authorized officer of the agency administering the surface of the lands to identify and locate the claimed lands on the ground;

(9) Nothing in the requirements for a map and description found in this section shall require the owner of a claim or site to employ a professional surveyor or engineer; and

(10) For claims on O & C lands located pursuant to 43 CFR subpart 3821 and claims located pursuant to Public Law 359, 43 CFR Part 3730, the notice or certificate shall be so marked.

(d) Each claim or site filed shall be accompanied by a $5 service fee which is not returnable.

§ 3833.1–3 When recordation not required.

If the owner of an unpatented mining claim or mill site had on file in the proper BLM office on October 21, 1976, an application for a mineral patent which complies with 43 CFR Part 3860, except the requirements for publication and payment of purchase price (43 CFR 3862.4), or if the owner of an unpatented mining claim or mill site located on or before October 21, 1976, shall file in the proper BLM office an application for a mineral patent, as described above, before October 22, 1979, the filing of the application will be deemed full compliance with the recordation requirements of section 314 of the Act and the owner of that claim or site shall be exempt from the filing requirements of § 3833.1.

§ 3833.2 Evidence of assessment work/notice of intention to hold claim.

§ 3833.2–1 When filing required.

(a)(1) The owner of an unpatented mining claim located on Federal land, excluding land within units of the National Park System, on or before October 21, 1976, shall file before October 22, 1979, and prior to December 31 of each calendar year following the calendar year of recording in the proper BLM office pursuant to this subpart evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

(2) The owner of a mill site or tunnel site located on Federal land, excluding land within units of the National Park System, on or before October 21, 1976, shall file before October 22, 1979, and prior to December 31 of each calendar year following the calendar year of recording pursuant to this subpart, in the proper BLM office a notice of intention to hold the mill or tunnel site.

(3) The owner of an unpatented mining claim located within the boundaries of units of the National Park System must comply with the requirements of 36 CFR 9.5(d) for annual filing and copies of all those annual filings received by the National Park Service pursuant to that regulation will be given by the National Park Service to the proper BLM office. Compliance with the requirements of that regulation will be deemed full compliance.

(b)(1) The owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the pre-

ceding assessment year or a notice of intention to hold the mining claim.

(2) The owner of a mill site or tunnel site located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which such mill or tunnel site was located, file in the proper BLM office a notice of intention to hold the mill or tunnel site.

§ 3833.2–2 Form—evidence of assessment work.

Evidence of annual assessment work shall be in the form of either:

(a) An official copy of the affidavit of assessment work performed filed in the local jurisdiction of the State where the claim or group of contiguous claims are located setting forth the following information:

(1) The serial number assigned to each claim by the authorized officer upon filing of a copy of the official record of the notice or certificate of location or patent application in the proper BLM office;

(2) Any change in the mailing address, if known, of the owner or owners of the claim or claims; or

(b) An official copy of the detailed report concerning geological, geochemical, and geophysical surveys filed in the office of the local jurisdiction in which the claim is located pursuant to the Act of September 2, 1958 (30 U.S.C. 28–1), setting forth the following additional information:

(1) The serial number assigned to each claim by the authorized officer upon filing in the proper BLM office of a copy of the official record of the notice or certificate of location or patent application; and

(2) Any change in the mailing address, if known, of the owner or owners of the claim.

§ 3833.2–3 Form—notice of intention to hold claim.

A notice of intention to hold a mining claim or group of mining claims or mill or tunnel sites shall be in the form of a letter signed by the owner or owners of such claim or site or their agent setting forth the following information:

(a) The serial number assigned to each claim by the authorized officer upon filing in the proper BLM office of a copy of the official record of the notice or certificate of location;

(b) Any change in the mailing address, if known, of the owner or owners of the claim;

(c) A statement that the claim is held and claimed by the owner(s) for the valuable mineral contained therein;

(d) A statement that the owner(s) intend to continue diligent exploration or development of the claim;

(e) The reasons that physical, legal, or other impediments, beyond the control of the owner(s), have prevented his filing an affidavit of assessment work performed or a detailed report of geological, geochemical, and geophysical survey under 43 CFR 3833.2–2 (such impediments may include, but are not limited to, deferment of annual assessment work, in which case the notice must be accompanied by a copy of petition for deferment and the order or decision disposing of such petition); and

(f) As required by section 314(a)(1) of the Act, the date on which a copy of the notice of intention to hold the mining claim, was filed in the office of the local jurisdiction in which the claim is located.

§ 3833.2–4 When evidence or notice not required.

Evidence of annual assessment work performed or a notice of intention to hold a mining claim need not be filed on unpatented mining claims or mill sites for which application for mineral patent which complies with 43 CFR Part 3860 has been filed and final certificate has been issued. (See 43 CFR 3851.5). The filing of an application and issuance of the final certificate will be deemed full compliance with the requirements of section 314(a) of the Act and the owner of that claim or site shall be exempt from the filing requirements of § 3833.2–1.

§ 3833.3 Notice of transfer of interest.

(a) Whenever the owner of an unpatented mining claim, mill site or tunnel site, which has been recorded in accordance with § 3833.1–2, sells, assigns, or otherwise conveys all or any part of his interest in the claim, his transferee shall file in the proper BLM office within 60 days after the completion of the transfer the following information:

(1) The serial number assigned to the claim by the authorized officer upon filing of a copy of the official record of the notice or certificate of location in the proper BLM office; and

(2) The name and mailing address of the person(s) to whom an interest in the claim has been sold, assigned, or otherwise transferred.

(b) Whenever any person acquires an interest through inheritance in an unpatented mining claim, mill site, or tunnel site recorded in accordance with § 3833.1, he shall file in the proper BLM office within 60 days after completion of the transfer the information required by paragraph (a) of this section.

§ 3833.4 Failure to file.

(a) The failure to file such instruments as are required by §§ 3833.1 and 3833.2 within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill site, or tunnel site and it shall be void.

(b) The fact that an instrument is filed in accordance with other laws permitting filing or recording thereof and is defective or not timely filed for record under those laws, or the fact that an instrument is filed for record under this subpart by or on behalf of some, but not all of the owners of the mining claim, mill site, or tunnel site, shall not be considered failure to file an instrument under this subpart.

§ 3833.5 Effect of recording and filing.

(a) Recordation or application involving an unpatented mining claim, mill site, or tunnel site by itself shall not render valid any claim which would not be otherwise valid under applicable law and does not give the owner any rights he is not otherwise entitled to by law.

(b) Nothing in this subpart shall be construed as a waiver of the assessment work requirements of section 2324 of the Revised Statutes, as amended (30 U.S.C. 28), and compliance with the requirements of this subpart shall be in addition to and not a substitute for compliance with the requirements of section 2324 and with laws and regulations issued by any State or other authority.

(c) Filing of instruments pertaining to mining claims under other Federal law with the BLM or any other Federal agency will not excuse the filings required by this subpart and filings under this subpart will not excuse the filing of instruments pertaining to mining claims under any other Federal law, except for filing a notice or certificate of location under this subpart which is marked by the owner as required by section 3833.1–2(c) (10) hereof, which filing shall satisfy the recording requirement for O & C lands under 43 CFR subpart 3821 and Public Law 359 lands under 43 CFR Part 3730.

(d) In the case of any action or contest affecting an unpatented mining claim, mill site or tunnel site, only those owners who have recorded their claim or site pursuant to § 3833.1–2 or filed a notice of transfer of interest pursuant to § 3833.3, will be considered by the United States as the record owners of such claim or site and will be personally notified of such action or contest. Owners who have not recorded a claim or site or filed a notice of transfer will not be personally served but will be put on notice only by publication and will be bound by any contest proceeding even though they have not been personally served. Diligent search and inquiry for the purposes of contesting the validity of a mining claim under this Title shall only require a search of the records of the proper BLM office and shall not require any other search or inquiry.

(e) Actual notice of an unpatented mining claim or mill or tunnel site by any employee or officer of the United States shall not exempt the claim or site from the requirements of this subpart.

Signed at Washington, D.C. on January 19, 1977.

CHRIS FARRAND,
Deputy Assistant Secretary of the Interior.

[FR Doc.77–2315 Filed 1–19–77;3:49 pm]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2420]

PART 3500—LEASING OF MINERALS OTHER THAN OIL AND GAS; GENERAL

PART 9230—TRESPASS

Exploration Licenses for Federally-Owned Coal Deposits

1. 43 CFR Part 3500 be amended by adding a new Subpart 3507 to read as follows:

Subpart 3507—Coal Exploration Licenses

Sec.
3507.0–1 Purpose.
3507.0–2 Objective.
3507.0–3 Authority.
3507.0–4 Responsibilities.
3507.0–5 Definitions.
3507.1 Lands subject to exploration license.
3507.2 Prelicensing procedures.
3507.2–1 Environmental review.
3507.2–2 Cultural resources.
3507.2–3 Threatened or endangered species.
3507.2–4 Surface management agency.
3507.3 Licenses.
3507.3–1 Applications for license.
3507.3–2 Issuance and termination of license.
3507.3–3 Rights under license.
3507.3–4 Operating regulations.
3507.3–5 Surface protection and reclamation.
3507.3–6 Ground water data.
3507.3–7 Bonds.
3507.4 Use of data.
3507.5 Use of surface.

Subpart 3507—Coal Exploration Licenses

§ 3507.0–1 Purpose.

This subpart provides for the issuance of licenses for exploring federally-owned coal deposits subject to disposal pursuant to this Part 3500, regardless of surface ownership.

§ 3507.0–2 Objective.

The objective of this subpart is to allow private parties to explore federally-owned coal deposits in order to obtain geological, environmental, and other pertinent data concerning the deposits and the lands in which they lie.

§ 3507.0–3 Authority.

The authority for this subpart is found in section 2(b) of the Mineral Leasing Act of February 25, 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1975, 90 Stat. 1083, 1085, 30 U.S.C. 201(b).

§ 3507.0–4 Responsibilities.

(a) The Bureau of Land Management (BLM) exercises at the Bureau level the Secretary's discretionary authority to determine whether exploration licenses are to be issued, and is responsible for issuing and cancelling exploration licenses and terminating the period of liability of bonds. The regulations in this Subpart shall be administered by the Director through the State Director and the authorized officer, subject to the supervisory authority of the Secretary. The proper BLM office is also the office of record.

(b) The Geological Survey exercises the Secretary's authority regarding operations conducted within the area of operations by the licensee, and is responsible for all geological, economic, and engineering determinations for the Department's coal leasing program.

(c) The authorized officer in consultation with the Geological Survey, and where appropriate, the surface management agency and the surface owner if other than the United States, formulates the requirements to be incorporated in exploration licenses for the protection of the surface resources, for reclamation, using as guidelines the surface operating and reclamation performance standards in Subpart 3041 of this chapter and 30 CFR Part 211, and for the bonding requirements.

(d) The Geological Survey, after consultation with the authorized officer, and where appropriate, the surface management agency and the surface owner, if other than the United States, reviews and concurs in exploration plans and recommends termination of the period liability of the bond upon the completion of exploration operations.

§ 3507.0–5 Definitions.

(a) "Coal deposit" means all federally-owned deposits which are subject to disposal under applicable law, except those held in trust for Indians.

(b) "Exploration" means drilling, excavating, and geophysical or geochemical surveying operations designed to obtain detailed data on the physical and chemical characteristics of coal deposits and their environment including the strata above the deposit, the hydrologic conditions associated with the deposit, and any other information that may be necessary to prepare a complete resource evaluation of the land.

(c) "Surface management agency" means the Federal ageny or authorized officer thereof other than the Bureau of Land Management having jurisdiction over the surface of lands containing coal deposits subject to this part.

(d) "Exploration plan" means a detailed plan showing the location and type of exploration work to be conducted, environmental protection procedures, present and proposed roads, as well as reclamation and abandonment procedures to be followed upon completion of such operations.

(e) "Exploration license" means a license issued by the authorized officer to permit the exploration of federally-owned coal deposits under terms and conditions that will protect the surface and subsurface resources and the environment, and provide for the reclamation of any damage caused by such exploration.

(f) "Participate" means to have or take part or share with others in an exploration license.

(g) "Participant" means a person who participates or shares in an exploration license.

(h) "Reasonable amount of coal for analysis and study" means only that amount of coal necessary to establish whether or not a federally owned deposit can be economically extracted and the removal of which does not cause substantial disturbance to the natural land surface.

(i) "Substantial disturbance to the natural land surface" means disturbance of the surface other than that necessary for the mere location of potential coal deposits and for the access to those deposits necessary to determine their location and quality by operations such as

Published in 42 F.R. 4457, January 25, 1977 - Effective January 19, 1977.

Circular Distribution List

surface sampling or drilling geologic study and exploration holes. These operations shall extend only to the degree and extent necessary to determine the nature of the overlying strata and the depth, thickness, shape, grade, and quality of the coal deposit.

§ 3507.1 Lands subject to exploration license.

(a) Exploration licenses may be issued for:

(1) Lands administered by the Secretary subject to coal leasing;

(2) National forest lands or other lands administered by the Secretary of Agriculture through the Forest Service subject to coal leasing;

(3) Coal deposits in lands which have been conveyed by the United States subject to a reservation to the United States or mineral deposits, to the extent that those deposits are subject to lease pursuant to this Part 3500; and

(4) Coal or lignite deposits in acquired lands set apart for military or naval purposes.

(b) No exploration license will be issued for any land on which a coal lease has been issued.

§ 3507.2 Prelicensing procedures.

§ 3507.2–1 Environmental review.

Before the issuance of an exploration license:

(a) The authorized officer or, where the surface is not administered by BLM, the surface management agency shall, in accordance with 43 CFR §§ 3041.2 and 3041.2–1 and using the exploration plan submitted by the applicant, make an environmental analysis and technical examination of the potential effect of such exploration on the resources of the area and its environment, including fish and other aquatic resources, wildlife habitats and populations, visual resources, recreation, cultural, and other resources in the affected area. The applicant shall not begin exploration until an environmental analysis is accomplished and the exploration plan has been approved.

(b) If the authorized officer or, where the surface is not administered by BLM, the surface management agency determines that an environmental impact statement is required by the National Environmental Policy Act of 1969 (43 U.S.C. 4321–4327), he will take necessary steps to prepare such a statement.

§ 3507.2–2 Cultural resources.

If lands in the National Register or nominated for inclusion in the National Register contain cultural resources which might be affected by the issuance of an exploration license, no license for such lands will be authorized until there has been compliance with Section 106 of the Historic Preservation Act (80 Stat. 917; 16 U.S.C. 470f) and Section 2(b) of E.O. 11593 of May 13, 1971, (36 FR 8921 (16 U.S.C. 470 fn)).

§ 3507.2–3 Threatened or endangered species.

The authorized officer shall not issue an exploration license if he determines pursuant to the Act of December 28, 1973 (87 Stat. 884, 16 U.S.C. 1531–1543) that the existence of any threatened or endangered species of fauna or flora will be jeopardized and that critical habitat would be destroyed or adversely modified to a significant degree by the exploration activities authorized by that license. In making this determination, the authorized officer shall consult the surface management agency, if the surface is not managed by BLM.

§ 3507.2–4 Surface management agency.

The authorized officer shall issue an exploration license covering lands the surface of which is under the jurisdiction of any Federal agency other than the Bureau of Land Management only upon such conditions as the surface management agency may prescribe with respect to the use and protection of the nonmineral interests in those lands.

§ 3507.3 Licenses.

§ 3507.3–1 Applications for license.

(a) *Applications.* Exploration license applications shall be submitted to the authorized officer and shall be subject to the following requirements:

(1) No specified form of application is required.

(2) Each application shall identify the tract or tracts to be explored described by legal description (or, if unavailable, by metes and bounds).

(3) Each application shall contain three copies of an exploration plan which complies with the requirements of 30 CFR 211.10.

(4) Each application with supporting documents shall be filed in the proper BLM Office, together with a nonrefundable $250 license fee.

(5) A separate application shall be filed for exploration in each State.

(b) *Qualified persons.* Any person qualified to hold leases or contracts issued pursuant to this Part 3500 may apply for an exploration license.

(c) *Call for applications.* Nothing in this subpart shall preclude the authorized officer from issuing a call for an expression of interest in exploration licenses for a given area.

(d) *Participation.* Applicants for licenses shall be required, after approval of the plan and prior to issuance, to afford other parties an opportunity, on a pro rata cost sharing basis, to participate in the approved exploration plan. Upon notice that a license will be issued to him an applicant must publish a "Notice of Invitation," approved by the authorized officer, once every week for four consecutive weeks in at least one newspaper of general circulation in the area where the lands covered by the license application are situated. This notice must contain an invitation to the public to participate in the proposed exploration program. Copies of published Notices of Invitation must be filed with the authorized officer upon each publication for posting in the proper BLM Office. Any person who elects to participate in the exploration programs shall notify in writing the authorized officer and the applicant. Upon the applicant's compliance with the requirements of this section, all else being regular, the authorized officer may issue the exploration license.

§ 3507.3–2 Issuance and termination of license.

(a) *General.* No person may conduct exploration without a lease unless he has been issued an exploration license. An exploration license shall not be required for "casual use" as defined in 30 CFR § 211.10(a). The issuance of exploration licenses under this Subpart is discretionary with the authorized officer. An exploration license shall confer no right to a lease.

(b) *Duration.* Exploration licenses may be issued for not more than two years, including the time for clean up and restoration. The authorized officer shall designate the date on which operations may begin.

(c) *Relinquishments.* A licensee may, subject to his own and his surety's continued obligation to comply with the terms and conditions and special stipulations of the license, the plan, and the regulations, relinquish an exploration license for all or any portion of the lands embraced in it. A relinquishment must be filed in the proper BLM Office.

(d) *Revocation.* An exploration license may be revoked for noncompliance with the terms of the license, the plan, or the regulations, after the licensee has been given a notice of violation and the licensee has failed to correct the violations within the period prescribed in the notice.

(e) *Exploration Plan.* The approved exploration plan will be dated, attached, and made a part of each license issued.

(f) *Modifications.* When unforeseen conditions that could result in signficant disturbance or damage are encountered or when geologic or other physical conditions warrant a modification in the approved exploration plan, (1) the authorized officer, after consultation with the Mining Supervisor and, where appropriate, the surface management agency, may adjust the terms and conditions of the license or, (2) the Mining Supervisor, after consultation with the authorized officer, and where appropriate, the surface management agency, may approve changes in the exploration plan.

(g) *Different States.* A separate exploration license is required for exploration in each State.

(h) *Extensions.* Exploration licenses may not be extended. Exploration operations may not be conducted after a license has expired. The licensee may apply for a new license as described in § 3507.3–1. A new license may be issued simultaneously with the termination of the existing license.

§ 3507.3–3 Rights under licenses.

(a) The issuance of an exploration license shall confer the right to perform exploration operations in accordance with the specific terms and conditions of the license, the approved plan, and the regulations.

(b) The issuance of exploration licenses shall not preclude the issuance of

coal leases at such time and places and to such persons as are deemed appropriate, subject to applicable regulations, and, if a coal lease is issued for lands embraced in an exploration license, those lands shall be eliminated from the license upon the effective date of the lease.

(c) A licensee may not remove for sale any coal from the deposits subject to his license, but he may remove a reasonable amount of coal for analysis and study.

§ 3507.3–4 Operating regulations.

The licensee shall comply with all regulations of the Secretary of the Interior, including the provisions of the operating regulations of the Geological Survey (30 CFR Part 211). Copies of the operating regulations may be obtained from the Mining Supervisor. The licensee shall allow inspection of the premises and operations by duly authorized representatives of the Secretary and, where appropriate, any surface management agency, and shall provide for the free ingress and egress of Government officers and persons using the lands under authority of the United States.

§ 3507.3–5 Surface protection and reclamation.

(a) The authorized officer shall include in each exploration license requirements and stipulations to protect the environment and other resources and to ensure reclamation of the land disturbed by exploration.

(b) A licensee may not cause substantial disturbance to the natural land surface.

§ 3507.3–6 Ground water data.

The applicant may be required to collect and report ground water data to the authorized officer.

§ 3507.3–7 Bonds.

(a) The provisions of the regulations in Subpart 3504 of this part are hereby made applicable to these regulations. The holding of an adequate compliance bond will be a condition of the exploration license.

(b) Prior to issuing an exploration license the authorized officer after consultation with the Mining Supervisor and, where appropriate, the surface management agency, the surface owner, shall ensure that the amount of the compliance bond or bonds to be furnished is sufficient to ensure compliance with the terms and conditions of the license and regulations, but in no event shall the amount of such bond be less than $5,000.

(c) Upon completion of an exploration and reclamation program which is in compliance with the terms and conditions of the exploration license, the approved plan, and the regulations, or upon discontinuance of exploration operations and completion of such reclamation as may be needed to the satisfaction of the authorized officer and, where appropriate, the surface management agency, the authorized officer will terminate the period of liability of the compliance bond. Where the surface of the land being explored is in private ownership, the authorized officer shall not terminate the period of liability under the compliance bond until he has received written acknowledgement from the surface owner of his satisfaction with the reclamation of the surface. In the event the licensee and surface owners are unable to reach agreement on the adequacy of the reclamation the authorized officer shall make the final determination. He will terminate the period of liability under the compliance bond after determining that the terms and conditions and special stipulations of the license, the approved plan, and the regulations have been met.

§ 3507.4 Use of data.

The licensee shall furnish to the Mining Supervisor copies of all data (including but not limited to, geological, geophysical, and core drilling analyses) obtained during exploration. The licensee shall submit such data and, where appropriate, the methods by which the data were gathered, at such time and in such form as required by the Mining Supervisor, the authorized officer, or surface management agency, or as specified in this Subpart the license, or the plan. The confidentiality of all data so obtained shall be maintained until after the areas involved have been leased or until such time as the Mining Supervisor determines that making the data available to the public would not damage the competitive position of the licensee, whichever comes first.

§ 3507.5 Use of surface.

(a) A licensee shall be entitled to use for exploration purposes only so much of the surface of the licensed lands as is authorized in the approved exploration plan.

(b) Operations under these regulations shall not unreasonably interfere with or endanger operations under any other authorized use pursuant to the provisions of any other Act.

(c) The licensee shall comply with all applicable Federal, State and local laws and regulations including the regulations in Parts 3041, 3500, 3600 of this chapter and 30 CFR Parts 211 and 231.

(d) Any person who willfully conducts coal exploration on lands subject to this subpart without an exploration license shall be subject to the provisions of § 9239.5–3(f) of this chapter.

2. Paragraph (b)(3) of 43 CFR 9239.-0–3 be amended to read as follows:

§ 9239.0–3 Authority.

* * * * *

(b) * * *

(3) *Coal trespass.* 18 U.S.C. 1851; 30 U.S.C. 201(b)(4).

3. 43 CFR 9239.5–3 be amended by adding a new paragraph (f) to read as follows:

§ 9239.5–3 Coal.

* * * * *

(f) *Penalties for unauthorized exploration for coal.* (1) Any person who willfully conducts coal exploration for commercial purposes without an exploration license issued under Subpart 3507 of this chapter shall be subject to a fine of not more than $1,000 for each day of violation.

(2) All data collected by said person on any Federal lands as a result of such violations shall immediately be made available to the Secretary, who shall make the data available to the public as soon as possible.

(3) No penalty under this section may be assessed unless such person is given notice and opportunity for a hearing with respect to such violation pursuant to Part 4 of this chapter.

Dated: January 19, 1977.

THOMAS S. KLEPPE,
Secretary,
Department of the Interior.

[FR Doc.77–2261 Filed 1–24–77;8:45 am]

GPO 839-653

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2421]

SUBCHAPTER F—OUTDOOR RECREATION AND WILDLIFE MANAGEMENT

PART 6010—GENERAL PROGRAM

Criminal Penalty for Violation of Rules of Conduct

1. The table of contents of Part 6010 is amended to read as follows:

Sec.
6010.0–3 Authority.
6010.1 Identification of lands.
6010.2 Rules of Conduct.
6010.3 Supplemental rules.
6010.4 Closure of lands.
6010.5 State and local laws.
6010.6 Criminal penalties.

2. In Part 6010 the Authority section is amended to read as follows:

§ 6010.0–3 Authority.

Sections 1, 3, and 5 (50 Stat. 874 and 875; 43 U.S.C. 1181a, 1181c, 1181e); R.S. 2478 (43 U.S.C. 1201); and sections 302 (b) and 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732 and 1733).

3. Part 6010 is amended by adding after § 6010.5 a new § 6010.6 to read as follows:

§ 6010.6 Criminal penalties.

Any person who knowingly and willfully violates any rule of conduct described in § 6010.2 or violates any closure order issued under § 6010.4 shall be fined not more than $1,000 or imprisoned not more than 12 months, or both.

CHRIS FARRAND,
Acting Assistant Secretary, Land and Water Resources, U.S. Department of the Interior.

APRIL 14, 1977.

[FR Doc.77–11525 Filed 4–20–77;8:45 am]

Published in 42 F.R. 20625, April 21, 1977 - Effective April 21, 1977.

Circular Distribution List

GPO 840-596

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER D—RANGE MANAGEMENT (4000)

[Circular No. 2422]

PART 4700—WILD FREE-ROAMING HORSE AND BURRO PROTECTION, MANAGEMENT, AND CONTROL

Use of Helicopters in Management of Wild Free-Roaming Horses and Burros

1. Section 4700.0–3 is revised to read as follows:

§ 4700.0–3 Authority.

The Act of December 15, 1971 (16 U.S.C. 1331–1340), as amended, and the Act of June 28, 1934 (43 U.S.C. 314–315r).

2. Section 4700.0–5 is amended by revising paragraph (i) and by adding new paragraphs (k), (l), and (m) to read as follows:

§ 4700.0–5 Definitions.

* * * * *

(i) "Act" means the Act of December 15, 1971 (16 U.S.C. 1331–1340), as amended.

* * * * *

(k) "Malicious harassment" means any intentional act which demonstrates a deliberate disregard for the well-being of wild free-roaming horses and burros and which creates the likelihood of injury, or is detrimental to normal behavior patterns of wild free-roaming horses and burros including feeding, watering, resting, and breeding. Such acts include, but are not limited to, unauthorized chasing, pursuing, herding, roping, or attempting to gather or catch wild free-roaming horses and burros. It does not apply to lawfully conducted activities by or on behalf of the Bureau of Land Management or the Forest Service in implementation or performance of duties and responsibilities under this Act.

(l) "Captured animal" means a wild free-roaming horse or burro taken and held in the custody of the authorized officer. This term does not apply to an animal placed in private custody through a cooperative agreement under § 4740.2 (b) or § 4750.2.

(m) "Humane procedure" means kind and merciful treatment, without causing unnecessary stress or suffering to the animal.

3. Section 4720.2 is amended by revising paragraph (a) to read as follows:

§ 4720.2 Claimed animals.

(a) Any person claiming ownership under State branding and estray laws of unbranded or branded horses or burros on public land where such animals are not authorized must present evidence of ownership to justify a roundup before permission will be granted to gather such animals. Claims of ownership with supporting evidence were required to be filed during a 90-day claiming period which expired November 15, 1973. Unauthorized privately owned horses or burros entering onto the public lands after November 15, 1973, may be claimed by filing an application with the District Manager. All written authorizations to gather claimed animals shall be on a form approved by the Director and shall provide for compliance with appropriate provisions of Subpart 4720. After such public notice as the authorized officer deems appropriate to inform interested parties, he may authorize the gathering or roundup. The authorized officer shall provide in the authorization that the gathering or roundup shall be consistent with these regulations; shall establish in the authorization a reasonable period of time to allow the gathering of the claimed animals; and shall provide such other conditions in the authorization which he deems necessary to minimize stress on any associated wild free-roaming horses or burros and to protect other resources.

(b) Animals captured in Bureau of Land Management conducted roundups and determined to be privately owned may be secured by the appropriate claimant upon payment of trespass charges in accordance with § 4720.3, and a per head share of helicopter rental and other associated costs determined appropriate by the authorized officer.

* * * * *

4. Subpart 4730 is amended by adding §§ 4730.7, 4730.7–1, 4730.7–2 and 4730.7–3 to read as follows:

Published in 42 F.R. 26653, May 25, 1977 - Effective May 25, 1977.

Circular Distribution List

§ 4730.7 Aircraft and motor vehicles.

§ 4730.7–1 Fixed-wing aircraft.

Fixed-wing aircraft may be used for inventory, observation, and surveillance purposes required for the administration of the Act. Such aircraft use shall be consistent with the Act of September 8, 1959, as amended (18 U.S.C. 41 et seq.). Fixed-wing aircraft shall not be used in connection with capture operations except as support vehicles.

§ 4730.7–2 Helicopters.

Only the authorized officer may use or contract for the use of helicopters in the administration of the Act. Helicopters may be used in all phases of the administration of the Act including, but not limited to, inventory, observation, surveillance, and capture operations (see § 4740.4). Helicopters may be used in areas where all animals are claimed, only if forage, habitat, or watershed resources are being adversely affected by horses and burros and helicopters are the only feasible method available to capture and remove the animals. The authorized officer shall supervise all helicopter use as follows:

(a) The authorized officer shall have the means to communicate with the pilot and be able to direct the use of the helicopter.

(b) The authorized officer shall be able to observe the effects of the use of the helicopter on the well-being of the animals.

§ 4730.7–3 Motor vehicles.

Motor vehicles may be used in the administration of the Act except that such vehicles shall not be used in connection with capture operations for driving or chasing the animals. The use of motor vehicles for the purpose of transporting captured animals is subject to the provisions of § 4740.4(b)

5. Subpart 4740 is amended by adding § 4740.4 to read as follows:

§ 4740.4 Humane use of helicopters and motor vehicles.

(a) The use of helicopters is authorized to locate the animals involved and for related purposes such as to transport personnel and equipment. The condition of the animals shall be continuously observed by the authorized officer and should signs of unnecessary stress be noted, the source of stress shall be removed so as to allow for recovery. Helicopters may be used in roundups or other capture operations subject to the following humane procedures:

(1) Helicopters shall be used in such a manner that bands or herds will tend to remain together.

(2) The rate of movement shall not exceed limitations set by the authorized officer who shall consider terrain, weather, distance to be traveled, and condition of animals.

(3) The helicopter shall be used to enable the authorized officer to look for the presence of dangerous areas and move the animals away from hazards during the capture operation.

(4) During capture operations, animals shall be moved in such a way as to prevent unnecessary stress or injury.

(b) Motor vehicles may be used for the purposes of transporting captured animals, subject to the following humane procedures:

(1) All such transportation shall be in compliance with appropriate State and Federal laws and regulations applicable to the humane transportation of horses and burros.

(2) Vehicles shall be in good repair, of adequate rated capacity, and carefully operated so as to insure that captured animals are transported without undue risk of injury.

(3) Vehicles shall be inspected and approved by an authorized officer prior to use.

(4) Where necessary and practical, animals shall be sorted as to age, size, temperament, sex, and condition when transporting them so as to minimize, to the extent possible, injury due to fighting and trampling.

(5) The authorized officer shall consider the condition of the animals, weather conditions, type of vehicles, and distance to be transported when planning for the movement of captured animals.

GUY R. MARTIN,
Assistant Secretary of the Interior.

MAY 20, 1977.

[FR Doc.77–14929 Filed 5–24–77;8:45 am]

GPO 841-242

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2423]

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

Group 2300—Land Withdrawals and Revocations

PART 2360—NATIONAL PETROLEUM RESERVES IN ALASKA

Management and Protection of the National Petroleum Reserve in Alaska

Subchapter B of Chapter II of Title 43 is amended by adding a new Part 2360 and a new Subpart 2361 as follows:

PART 2360—NATIONAL PETROLEUM RESERVE IN ALASKA

Subpart 2361—Management and Protection of the National Petroleum Reserve in Alaska

Sec.
2361.0–1 Purpose.
2361.0–2 Objectives.
2361.0–3 Authority.
2361.0–4 Responsibility.
2361.0–5 Definitions.
2361.0–6 [Reserved].
2361.0–7 Effect of Law.
2361.1 Protection of the Environment.
2361.2 Use Authorization.
2361.3 Unauthorized Use and Occupancy.

Subpart 2361—Management and Protection of the National Petroleum Reserve in Alaska

§ 2361.0–1 Purpose.

The purpose of the regulations in this subpart is to provide procedures for the protection and control of environmental, fish and wildlife, and historical or scenic values in the National Petroleum Reserve in Alaska pursuant to the provisions of the Naval Petroleum Reserves Production Act of 1976. (90 Stat. 303; 42 U.S.C. 6501 et seq.).

§ 2361.0–2 Objectives.

The objective of this subpart is to provide for the protection of the environmental, fish and wildlife, and historical or scenic values of the Reserve so that activities which are or might be detrimental to such values will be carefully controlled to the extent consistent with the requirements of the Act for petroleum exploration of the reserve.

§ 2361.0–3 Authority.

The Naval Petroleum Reserve Production Act of 1976 (90 Stat. 303, 42 U.S.C. 6501, et seq.) is the statutory authority for these regulations.

§ 2361.0–4 Responsibility.

(a) The Bureau of Land Management (BLM) is responsible for the surface management of the reserve and protection of the surface values from environmental degradation, and to prepare rules and regulations necessary to carry out surface management and protection duties.

(b) The U.S. Geological Survey is responsible for management of the continuing exploration program during the interim between the transfer of jurisdiction from the U.S. Navy to the U.S. Department of the Interior and the effective date of any legislation for a permanent development and production program, to enforce regulations and stipulations which relate to the exploration of petroleum resources of the Reserve, and to operate the South Barrow gas field or such other fields as may be necessary to supply gas at reasonable and equitable rates to the Native village of Barrow and other communities and installations at or near Point Barrow, Alaska, and to installations of the Department of Defense and other agencies of the U.S. located at or near Point Barrow, Alaska.

§ 2361.0–5 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) "Act" means the Naval Petroleum Reserves Production Act of 1976, (90 Stat. 303, 42 U.S.C. 6501, et seq.).

(b) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties of this subpart.

(c) "Exploration" means activities conducted on the Reserve for the purpose of evaluating petroleum resources which include crude oil, gases of all kinds (natural gas, hydrogen, carbon dioxide, helium, and any others), natural gasoline, and related hydrocarbons (tar sands, asphalt, propane butane, etc.), oil shale and the products of such resources.

(d) "Reserve" means those lands within the National Petroleum Reserve in Alaska (prior to June 1, 1977, designated Naval Petroleum Reserve No. 4) which was established by Executive Order of the President, dated February 27, 1923, except for tract Numbered 1 as described in Public Land Order 2344 (the Naval Arctic Research Laboratory—surface estate only) dated April 24, 1961.

(e) "Secretary" means the Secretary of the Interior.

(f) "Special areas" means areas within the reserve identified by the Secretary of the Interior as having significant subsistence, recreational, fish and wildlife, or historical or scenic value and, therefore, warranting maximum protection of such values to the extent consistent with the requirements of the Act for the exploration of the Reserve.

(g) "Use authorization" means a written approval of a request for use of land or resources.

§ 2361.0–7 Effect of Law.

(a) Subject to valid existing rights, all lands within the exterior boundaries of the Reserve are reserved and withdrawn from all forms of entry and disposition under the public land laws, including the mining and mineral leasing laws, and all other Acts.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Secretary is authorized to:

(1) Make dispositions of mineral materials pursuant to the Act of July 31, 1947 (61 Stat. 681), as amended (30 U.S.C. 601), for appropriate use by Alaska Natives.

(2) Make such dispositions of mineral materials and grant such rights-of-way, licenses, and permits as may be necessary

Published in 42 F.R. 28720, June 3, 1977 - Effective May 31, 1977.

Circular Distribution List

to carry out his responsibilities under the Act.

(3) Convey the surface of lands properly selected on or before December 18, 1975, by Native village corporations pursuant to the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

(c) All other provisions of law heretofore enacted and actions heretofore taken reserving such lands as a Reserve shall remain in full force and effect to the extent not inconsistent with the Act.

(d) To the extent not inconsistent with the Act, all other public land laws are applicable.

§ 2361.1 Protection of the Environment.

(a) The authorized officer shall take such action, including monitoring, as he deems necessary to mitigate or avoid unnecessary surface damage and to minimize ecological disturbance throughout the reserve to the extent consistent with the requirements of the Act for the exploration of the reserve.

(b) The Cooperative Procedures of January 18, 1977, for National Petroleum Reserve in Alaska between the Bureau of Land Management (BLM) and the U.S. Geological Survey (GS) (42 FR 4542, January 25, 1977) provides the procedures for the mutual cooperation and interface of authority and responsibility between GS and BLM concerning petroleum exploration activities (i.e., geophysical and drilling operations), the protection of the environment during such activities in the Reserve, and other related activities.

(c) Maximum protection measures shall be taken on all actions within the Utukok River Uplands, Colville River, and Teshekpuk Lake special areas, and any other special areas identified by the Secretary as having significant subsistence, recreational, fish and wildlife, or historical or scenic value. The boundaries of these areas and any other special areas identified by the Secretary shall be identified on maps and be available for public inspection in the Fairbanks District Office. In addition, the legal description of the three special areas designated herein and any new areas identified hereafter will be published in the FEDERAL REGISTER and appropriate local newspapers. Maximum protection may include, but is not limited to, requirements for: (1) rescheduling activities and use of alternative routes, (2) types of vehicles and loadings, (3) limiting types of aircraft in combination with minimum flight altitudes and distances from identified places and (4) special fuel handling procedures.

(d) Recommendations for additional special areas may be submitted at any time to the authorized officer. Each recommendation shall contain a description of the values which make the area special, the size and location of the area on appropriate USGS quadrangle maps, and any other pertinent information. The authorized officer shall seek comments on the recommendation(s) from interested public agencies, groups, and persons. These comments shall be submitted along with his recommendation to the Secretary. Pursuant to section 104(b) of the Act, the Secretary may designate that area(s) which he determines to have special values requiring maximum protection. Any such designated area shall be identified in accordance with the provision of § 2361.1(c) of this subpart.

(e) (1) To the extent consistent with the requirements of the Act and after consultation with appropriate Federal, State, and local agencies and Native organizations, the authorized officer may limit, restrict, or prohibit use of and access to lands within the Reserve, including special areas. On proper notice as determined by the authorized officer, such actions may be taken to protect fish and wildlife breeding, nesting, spawning, lambing of calving activity, major migrations of fish and wildlife, and other environmental, scenic, or historic values.

(2) The consultation requirement in §2361.1(e)(1) of this subpart is not required when the authorized officer determines that emergency measures are required.

(f) No site, structure, object, or other values of historical archaelogical, cultural, or paleontological character, including but not limited to historic and prehistoric remains, fossils, and artifacts, shall be injured, altered, destroyed, or collected without a current Federal Antiquities permit.

§ 2361.2 Use Authorizations.

(a) Except for petroleum exploration which has been authorized by the Act, use authorizations must be obtained from the authorized officer prior to any use within the Reserve. Only those uses which are consistent with the purposes and objectives of the Act will be authorized.

(b) Except as may be limited, restricted, or prohibited by the authorized officer pursuant to § 2361.1 of this subpart or otherwise, use authorizations are not required for (1) subsistence uses (e.g., hunting, fishing, and berry picking) and (2) recreational uses (e.g., hunting, fishing, backpacking, and wildlife observation).

(c) Applications for use authorizations shall be filed in accordance with applicable regulations in this chapter. In the absence of such regulation, the authorized officer may make such dispositions absence of such regulations, the author- of mineral materials and grant such rights-of-way, licenses, and permits as may be necessary to carry out his responsibilities under the Act.

(d) In addition to other statutory or regulatory requirements, approval of applications for use authorizations shall be subject to such terms and conditions which the authorized officer determines to be necessary to protect the environmental, fish and wildlife, and historical or scenic values of the Reserve.

§ 2361.3 Unauthorized use and occupancy.

Any person who violates or fails to comply with regulations of this subpart is subject to prosecution, including trespass and liability for damages, pursuant to the appropriate laws.

GUY R. MARTIN,
Acting Secretary of the Interior.

MAY 27, 1977.

[FR Doc.77-15700 Filed 5-31-77;11:47 am]

GPO 841-320

to information on themselves which is maintained by the Council on Environmental Quality.

EFFECTIVE DATE: June 9, 1977.

FOR FURTHER INFORMATION CONTACT:

Ballard Jamieson, Jr., Privacy Act Liaison, the Council on Environmental Quality, 722 Jackson Place NW., Washington, D.C. 20006 (202-382-6867).

SUPPLEMENTARY INFORMATION: On pages 1044-45 of the FEDERAL REGISTER of January 5, 1977, the Council on Environmental Quality published proposed regulations for implementing the Privacy Act of 1974. Interested persons were given 30 days in which to submit comments. No written comments were received and the proposed regulations were therefore adopted without change as final regulations.

Signed this 21st day of June 1977.

NICHOLAS C. YOST,
Acting General Counsel.

Accordingly, Part 1516 is added to Title 40 of the CFR as follows:

Sec.
1516.1 Purpose and scope.
1516.2 Definitions.
1516.3 Procedures for requests pertaining to individual records in a record system.
1516.4 Times, places, and requirements for the identification of the individual making a request.
1516.5 Disclosure of requested information to the individual.
1516.6 Request for correction or amendment to the record.
1516.7 Agency review of request for correction or amendment of the record.
1516.8 Appeal of an initial adverse agency determination on correction or amendment of the record.
1516.9 Disclosure of record to a person other than the individual to whom the record pertains.
1516.10 Fees.

AUTHORITY: 5 U.S.C. 552a; Pub. L. 93-579.

§ 1516.1 Purpose and scope.

The purposes of these regulations are to:

(a) Establish a procedure by which an individual can determine if the Council on Environmental Quality (hereafter known as the Council) maintains a system of records which includes a record pertaining to the individual; and

(b) Establish a procedure by which an individual can gain access to a record pertaining to him or her for the purpose of review, amendment and/or correction.

§ 1516.2 Definitions.

For the purpose of these regulations—

(a) The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The term "maintain" means maintain, collect, use or disseminate;

(c) The term "record" means any item or collection or grouping of information about an individual that is maintained by the Council (including, but not limited to, his or her employment history, payroll information, and financial transactions), and that contains his or her name, or an identifying number, symbol, or other identifying particular assigned to the individual such as a social security number;

(d) The term "system of records" means a group of any records under the control of the Council from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual; and

(e) The term "routine use" means with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§ 1516.3 Procedures for requests for access to individual records in a record system.

An individual shall submit a written request to the Administrative Officer of the Council to determine if a system of records named by the individual contains a record pertaining to the individual. The individual shall submit a written request to the Administrative Officer of the Council which states the individual's desire to review his or her record. The Administrative Officer of the Council is available to answer questions regarding these regulations and to provide assistance in locating records in the Council's system of records.

§ 1516.4 Times, places, and requirements for the identification of the individual making a request.

An individual making a request to the Administrative Officer of the Council pursuant to § 1516.3 shall present the request at the Council's office, 722 Jackson Place, N.W., Washington, D.C. 20006, on any business day between the hours of 9 a.m. and 5 p.m. and should be prepared to identify himself by signature. Requests will also be accepted in writing if mailed to the Council's offices and signed by the requester.

§ 1516.5 Access to requested information to the individual.

The individual may submit a request to the Administrative Officer of the Council which states the individual's desire to correct or to amend his or her record. This request must be made in accordance with the procedures of § 1516.4 and shall describe in detail the change which is requested.

§ 1516.7 Agency review of request for correction or amendment of the record.

Within ten working days of the receipt of a request to correct or to amend a record, the Administrative Officer of the Council will acknowledge in writing such receipt and promptly either—

(a) Make any correction or amendment of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(b) Inform the individual of his or her refusal to correct or amend the record in accordance with the request, the reason for the refusal, and the procedure established by the Council for the individual to request a review of that refusal.

§ 1516.8 Appeal of the initial adverse agency determination on correction or amendment of the record.

An individual may appeal refusal by the Administrative Officer of the Council to correct or to amend his or her record by submitting a request for a review of such refusal to the General Counsel, Council on Environmental Quality, 722 Jackson Place, N.W., Washington, D.C. 20006. The General Counsel shall, not later than thirty working days from the date on which the individual requests such a review, complete such review and make a final determination unless, for good cause shown, the General Counsel extends such thirty day period. If, after his or her review, the General Counsel also refuses to correct or to amend the record in accordance with the request, the individual may file with the Council a concise statement setting forth the reasons for his or her disagreement with the General Counsel's decision and may seek judicial relief under 5 U.S.C. 552a (g)(1)(A).

§ 1516.9 Disclosure of a record to a person other than the individual to whom the record pertains.

The Council will not disclose a record to any individual other than to the individual to whom the record pertains without receiving the prior written consent of the individual to whom the record pertains, unless the disclosure either has been listed as a "routine use" in the Council's notices of its systems of records or falls within the special conditions of disclosure set forth in Section 3 of the Privacy Act of 1974.

§ 1516.10 Fees.

If an individual requests copies of his or her record, he or she shall be charged ten cents per page, excluding the cost of any search for the record, in advance of receipt of the pages.

[FR Doc.77-18207 Filed 6-24-77;8:45 am]

Title 43—Public Lands: Interior

SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF THE INTERIOR

[Circular No. 2424]

PART 7—EMPLOYEES: INTEREST IN LANDS AND RESOURCES

Exceptions; Acquisition

AGENCY: Office of the Secretary, Interior.

ACTION: Final rulemaking.

SUMMARY: Final rulemaking is adopted to allow Department of the Interior employees and family members to acquire excess horses and burros. Federal lands in many areas are overstocked with wild free-roaming horses and burros. This rulemaking allows employees of the Department the same privileges as other citizens to adopt and care for an excess horse or burro under the provisions of

the Wild Free-Roaming Horse and Burro Act of 1971 (16 U.S.C. 1331 et seq.).
DATE: Effective June 27, 1977.

FOR FURTHER INFORMATION CONTACT:

Billy R. Templeton, 202-343-8735.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published on page 16641 of the FEDERAL REGISTER of March 29, 1977, to amend 43 CFR 7.4(a) to provide that Department of the Interior employees and their family members can enter into agreements to acquire and maintain a wild free-roaming horse or burro under provisions of the Wild Free-Roaming Horse and Burro Act of 1971. Comments, suggestions, or objections were invited through May 13, 1977. No comments were received. Therefore, under authority of the Wild Free-Roaming Horse and Burro Act of 1971 (16 U.S.C. 1331 et seq.) the proposed amendment of 43 CFR 7.4(a) is adopted without change, as set forth below.

The principle author is Robert J. Springer of the Bureau of Land Management, Division of Range Management.

GUY R. MARTIN,
Assistant Secretary of the Interior.

June 20, 1977.

Section 7.4 is amended by adding a paragraph (a)(4) to read as follows:

§ 7.4 Exceptions.

(a) * * *

(4) An employee of the Department of the Interior or any member of an employee's family may acquire a wild free-roaming horse or burro for maintenance and protection through a cooperative agreement entered into in accordance with 43 CFR 4740.2 and 4750.2.

[FR Doc.77-18206 filed 6-24-77;8:45 am]

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5620; ID-6898]

IDAHO

Powersite Restoration No. 728; Partial Revocation of Powersite Reserve No. 565; Correction

AGENCY: Bureau of Land Management (Interior).

ACTION: Final rule.

SUMMARY: This order will correct an inadvertent omission from Public Land Order No. 5607 which was approved November 12, 1976, and published in the November 23 issue of the FEDERAL REGISTER at page 51603.

DATES: Effective June 27, 1977.

FOR FURTHER INFORMATION CONTACT:

Eldon G. Hayes, 202-343-8731.

SUPPLEMENTARY INFORMATION:

Public Land Order No. 5607, F.R. Doc. 76-34517 which appeared in the FEDERAL REGISTER issue of November 23, 1976, page 51603, is hereby corrected as follows:

1. The Executive Order of November 21, 1916, creating Powersite Reserve No. 565, as construed by Powersite Interpretation No. 13, dated April 22, 1922, is hereby revoked so far as it affects those portions of the following described lands lying more than 3,300 feet above mean sea level:

BOISE MERIDIAN

T. 9 S., R. 17 E.,
Sec. 34, lots 12, 13 and 14;
Sec. 35, lots 10, 11, 12, 13 and S½NW¼;
Sec. 36, lots 10, 11, 12, 13 and 14.

The areas described aggregate approximately 400 acres in Jerome County.

2. The described lands in section 36 lying below 3,300 foot mean sea level are being restored subject to section 24 of the Federal Power Act of June 10, 1920, supra. Upon promulgation of this order, title to all the lands in section 36 will vest in the State of Idaho. The lands in sections 34 and 35 are privately owned.

GUY R. MARTIN,
Assistant Secretary of the Interior.

JUNE 16, 1977.

[FR Doc.77-18205 Filed 6-24-77;8:45 am]

Title 46—Shipping

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER D—TANK VESSELS

SUBCHAPTER O—CERTAIN BULK DANGEROUS CARGOES

[CGD 77-058a]

TANK VESSELS CARRYING OIL IN TRADE

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The amendments in this document correct references, contained in notes preceding Subchapter D and O of Title 46, Code of Federal Regulations, concerning design, equipment, and operation requirements in 33 CFR Part 157. These notes no longer accurately describe the contents of 33 CFR Part 157 and mislead the reader. This document corrects both notes to accurately describe the requirements in Part 157.

EFFECTIVE DATE: These amendments are effective on: June 27, 1977.

FOR FURTHER INFORMATION CONTACT:

Captain George K. Greiner, Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590, 202-426-1477.

SUPPLEMENTARY INFORMATION: Since the amendment in this document is an editorial change, notice of proposed rule making is considered unnecessary and it may be made effective in less than thirty days after publication.

DRAFTING INFORMATION

The principal persons involved in drafting this rule are Commander Richard A. Sutherland, Project Manager, Office of Merchant Marine Safety, and Mr. Stanley M. Colby, Project Attorney, Office of the Chief Counsel.

DISCUSSION OF RULE

Subchapter's D and O of Title 46, Code of Federal Regulations, each contain a note following the tables of content reading as follows:

NOTE.—33 CFR Part 157 contains additional design, equipment, and operation requirements for certain seagoing U.S. tankships and barges that carry oil in the United States domestic trade.

In the December 13, 1976 issue of the FEDERAL REGISTER (41 FR 54177), the Coast Guard added design, equipment, and operation requirements. These requirements were for seagoing U.S. flag tank vessels of 150 gross tons or more engaged in carrying oil in foreign trade and for foreign flag tank vessels of 150 gross tons or more carrying oil and entering the navigable waters of the United States. They were added to the regulations that govern the design and operation of seagoing U.S. tankships and barges of 150 gross tons or more that carry oil in domestic trade, published in the FEDERAL REGISTER (40 FR 48280). The notes in Subchapter D and O were not updated to reflect the new requirements.

In consideration of the foregoing, Subchapters D and O of Chapter 1, Title 46, Code of Federal Regulations are each amended by revising the notes following the tables of contents to read as follows:

NOTE.—33 CFR Part 157 contains additional design, equipment, and operation requirements for certain seagoing tankships and barges that carry oil in bulk.

(R.S. 4405, as amended (46 U.S.C. 375), R.S. 4462, as amended (46 U.S.C. 416), sec. 6(b)(1), 80 Stat. 937 (49 U.S.C. 1655(b)(1); 49 CFR 1.46(b)).)

Dated: June 20, 1977.

O. W. SILER,
Admiral, U.S. Coast Guard Commandant.

[FR Doc.77-18257 Filed 6-24-77;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 19667; RM-1475; FCC 77-334]

PART 73—RADIO BROADCAST SERVICES

Requirement of Broadcast Licensees To Maintain Certain Program Records; Correction

AGENCY: Federal Communications Commission.

ACTION: Correction.

SUMMARY: This rule was inadvertently omitted from a document which was published in the FEDERAL REGISTER (42 FR 30180, June 13, 1977). The rule requires noncommercial educational radio licensees to make the contents of their

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2425]

PART 3520—PREFERENCE RIGHT AND COMPETITIVE LEASES

Coal Leases; Diligent Development and Continued Operation: Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This notice corrects an error in a section of an earlier rule change. The rulemaking is not changed except as to form.

DATE: Effective September 6, 1977.

ADDRESS: Director (210), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Billy R. Templeton, 202-343-8735.

SUPPLEMENTARY INFORMATION: Final rulemaking regarding diligent development and continued operation on coal leases was published on December 29, 1976, on pages 56643 through 56646. The format of Item 7, used to set out amendments to 43 CFR 3523.2-1, was incorrect. The rules are unchanged. The amendatory language in Item 7 of F.R. Doc. 76-38174, beginning at the bottom of the left hand column of page 56646 of the FEDERAL REGISTER of December 29, 1976, is corrected as set forth below.

"7. 43 CFR 3523.2-1(b)(1) (ii) and (iii) are revised to read as follows."

GARY J. WICKS,
Deputy Assistant Secretary of the Interior.

AUGUST 25, 1977.

[FR Doc.77-25760 Filed 9-2-77;8:45 am]

Published in 42 F.R. 44545, September 6, 1977 - Effective September 6, 1977.

Circular Distribution List

GPO 842-653

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

[Circular No. 2426]

PART 2850—POWER TRANSMISSION LINES

Subpart 2851—Principles and Procedures Power Transmission Lines

ELECTRIC TRANSMISSION FACILITIES CROSSING FEDERAL LANDS

1. Section 2851.1–1(a)(5) is amended to read as follows:

§ 2851.1–1 Terms and conditions.

(a) * * *

(5) An applicant for a right-of-way for a transmission facility having a voltage of 66 kilovolts or more must, in addition to the requirements of Subpart 2802 of this part execute and file with its application a stipulation agreeing to accept the right-of-way grant subject to the following conditions:

* * * * *

2. Section 2851.2–1(c)(4) is amended to read as follows:

§ 2851.2–1 Applications.

* * * * *

(c) * * *

(4) If the line is to have a nominal voltage of 66 kilovolts or more, the application should include a one-line diagram of the proposed line and the immediate interconnecting facilities including power plants and substations, a power flow diagram or proposed line and connecting major lines showing conditions under normal use, and typical structure drawings of proposed lines showing construction dimensions and a list of materials.

DANIEL P. BEARD,
Deputy Assistant Secretary of the Interior.

AUGUST 30, 1977.

[FR Doc.77-26050 Filed 9-7-77;8:45 am]

Published in 42 F.R. 44985, September 8, 1977 - Effective September 9, 1977.

Circular Distribution List

GPO 842-835

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER A—GENERAL MANAGEMENT (1000)

[Circular No. 2427]

PART 1880—FINANCIAL ASSISTANCE, LOCAL GOVERNMENTS

Payments in Lieu of Taxes

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: The Department of the Interior is adopting procedures for payments in lieu of taxes to qualified local units of general government under the Act of October 20, 1976. The intended effect of these procedures is to relieve the fiscal burden of tax exempt Federal land within the boundaries of local units of government.

DATE: Effective September 30, 1977.

ADDRESS: Director (520), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Edward P. Greenberg, Division of Finance (520), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240, (202-343-3624).

SUPPLEMENTARY INFORMATION: The principal author of this final rulemaking is Billy R. Templeton of the Bureau of Land Management, Division of Legislation and Regulatory Management, assisted by Lyle Rising of the Office of the Solicitor, Department of the Interior.

Proposed rulemaking, setting forth procedures for making payments to qualified local units of general government under the Act of October 20, 1976 (31 U.S.C. 1601 et seq.), was published in the FEDERAL REGISTER of August 8, 1977. Public comments had been invited several weeks prior to that date and additionally for 30 days after, for a period ending September 8, 1977. The major comments received are discussed below by the section of the rulemaking addressed.

§ 1881.0-5 DEFINITIONS

1. The major comment received during the period prior to the publication of proposed rulemaking concerned the eligibility of township level governments in the State of Michigan to receive payments under the Act. Comments on the same issue were received during the comment period after publication of the proposed rulemaking.

An analysis of the statistical data available indicates that the county is the principal taxing body and provider of general government services on the local level in the State of Michigan. Therefore, the definition section is essentially unchanged and the following list of local units of general government are the ones determined qualified to receive payments under the Act.

Alabama	Counties.
Alaska	Boroughs, and the cities of Juneau and Sitka (City/Boroughs) and the independent municipality of Anchorage
Arizona	Counties.
Arkansas	Do.
California	Counties, and the city of San Francisco (City/County).
Colorado	Counties, and the city of Denver (City/County).
Connecticut	Towns.
Delaware	Counties.
District of Columbia	City of Washington.
Florida	Counties, and the County of Duval (City of Jacksonville).
Georgia	Counties, and the independent city of Columbus.
Guam	Guam.
Hawaii	Counties, and the city of Honolulu (City/County).
Idaho	Counties.
Illinois	Do.
Indiana	Counties, and the County of Marion (City of Indianapolis).
Iowa	Counties.
Kansas	Do.
Kentucky	Do.
Louisiana	Parishes, and the Parish of Orleans (City of New Orleans) and Parish of East Baton Rouge (City of Baton Rouge).
Maine	Towns.[1]
Maryland	Counties, and the independent city of Baltimore.
Massachusetts	Towns[1] and County of Nantucket (Township of Nantucket), and County of Suffolk (City of Boston).
Michigan	Counties.
Minnesota	Do.
Mississippi	Do.
Missouri	Counties, and the independent city of St. Louis.
Montana	Counties.
Nebraska	Do.
Nevada	Counties, and the independent city of Carson City.
New Hampshire	Towns.[1]
New Jersey	Counties.
New Mexico	Do.
New York	Counties (counties of Bronx, Kings, New York, Queens, and Richmond are all New York City).
North Carolina	Counties.
North Dakota	Do.
Ohio	Do.
Oklahoma	Do.
Oregon	Do.
Pennsylvania	Counties, and the County of Philadelphia (City of Philadelphia).
Puerto Rico	The Commonwealth.
Rhode Island	Towns.[1]
South Carolina	Counties.
South Dakota	Counties, except Shannon, Todd, and Washabough which are attached to other counties for government purposes.
Tennessee	Counties, and the metropolitan government of Nashville and Davidson County.
Texas	Counties.
Utah	Do.
Vermont	Towns.[1]
Virginia	Counties, and the independent cities.
Virgin Islands	Virgin Islands.
Washington	Counties.
West Virginia	Do.
Wisconsin	Do.
Wyoming	Do.

[1] Where organized town governments exist. If towns are unincorporated or the town governments are inactive, payments shall be made to counties.

2. The issue of entitlement as related to lands owned or administered by State and local governments and exempt from State and local taxes at the time of their acquisition by the Federal government was commented upon in two contexts: a. Exchange lands and b. lands upon which payments in lieu of taxes were being made to local units of governments by States at the time of acquisition by the Federal government.

Section 6(a)(4) of the Act is specific with regard to lands which were exempt from real estate taxes at the time of their acquisition. The Act precludes consideration of such lands as entitlement lands.

3. It was reported that in New Hampshire the State government performs those functions normally considered local government functions in unincorporated places in the State. It was suggested that the State be the qualified unit of local government in those areas. The definition of "unit of local government" in

Published in 42 F.R. 51580, September 29, 1977 - Effective September 30, 1977.

Circular Distribution List

section 6(c) of the Act precludes the State as a unit of local government qualified to receive payments under the Act.

4. It was suggested that the definition of "money transfers" be changed to provide that funds received by qualified units of local government under the laws cited in section 4 of the Act and passed through to single purpose units of government, such as school districts, not be counted as a deduction against payments under the Act.

Section 2(a)(1) specifically requires that payment be reduced by the amount received by units of local government, in aggregate, under the laws cited in section 4. This cannot be changed by regulation.

§ 1881.2 USE OF PAYMENTS

1. It was suggested that section 1881.2 with regard to section 1 payments be reworded to read more restrictively regarding pass-throughs of moneys under the Act.

2. It was also suggested that the rules provide for conference with and consideration of the needs of lower levels of general government by the recipient of payments in the development of spending priorities. The language used is directly from the Act which states that the funds may be used for any governmental purpose. Limitations cannot be placed upon the use of these funds by regulations.

GENERAL COMMENTS

The following comments do not address a specific section of the proposed rulemaking.

1. It was suggested that an economic impact analysis under Executive Order 11821 and OMB Circular A-107 is required.

It was determined that no economic impact statement is required because possible inflationary impacts of the Act were considered by the Congress (see House report 94-1106, page 16). After such consideration, the Act was signed into law by the President directing the Secretary to make payments to the extent that funds are made available, in advance, in appropriation Acts.

2. It was commented that to make all payments to the States and have them pass the money through would be a good system to handle the payments.

This system of handling payments would not be consistent with the Act.

3. Also, concern was expressed that funds now being received might be diverted to other purposes by the new regulations. This is not the case. Any payments authorized to be made under this Act are new revenues to be used for any governmental purposes.

4. Editorial changes and corrections have been made as necessary.

Accordingly, under the authority of the Act of October 20, 1976 (31 U.S.C. 1601 et seq.) Group 1800, Subchapter A, Chapter II, Title 43 of the Code of Federal Regulations is amended by adding Part 1880 to read as follows:

Subpart 1881—Payments in Lieu of Taxes

Sec.	
1881.0-1	Purpose.
1881.0-3	Authority
1881.0-5	Definitions.
1881.1	Procedures.
1881.1-1	Procedures, general.
1881.1-2	Procedures, Section 1 payments.
1881.1-3	Procedures, Section 3 payments.
1881.1-4	Procedures, Absence of Information.
1881.2	Use of payments.
1881.3	Protests.
1881.4	Appeals.

§ 1881.0-1 Purpose.

The regulations establish procedures for making payments in lieu of taxes to units of local government for certain federal lands within their boundaries.

§ 1881.0-3 Authority.

The authority for these regulations is the Act of October 20, 1976, Pub. L. 94-565, 90 Stat. 2662, 31 U.S.C. §§ 1601-1607, hereinafter referred to as "the Act."

§ 1881.0-5 Definitions.

(a) A "government," as that term is used by the Bureau of the Census for general statistical purposes, is an organized entity having substantial autonomy and whose officers are either popularly elected or appointed by publicly elected officials. Other indicia of governmental character include (1) a high degree of responsibility to the public for performance of duties of a governmental nature, (2) power to levy taxes, and (3) power to issue debt paying interest exempt from Federal taxation.

(b)(1) "Unit of general government" means a unit of that type of government which, within its state, is the principal provider of governmental services affecting the use of entitlement lands. Those services of government include (but are not limited to) maintenance of land records, police protection, fire protection, taxation, land use planning, search and rescue and road construction. Ordinarily, a unit of general government will be a county. However, where a smaller unit of government is the principal provider of governmental services affecting the use of public lands within a state, the smaller unit, even though within a larger unit of government, will be considered a general unit of government and will receive payments under the Act. These units of general government will ordinarily be "towns" or townships within states where county governments are nonexistent or nearly nonexistent. The term "unit of general government" also includes:

(i) Governments with the functions of a unit of general government in that state combined with another type of government such as city, township, parish, borough or county, e.g., a city and county as in the City and County of Denver.

(ii) Cities located outside of any of the units of general government for that state and administering functions commonly performed by those units of general government.

(iii) Alaskan boroughs in existence on October 20, 1976.

(iv) The Governments of the District of Columbia, Puerto Rico, Guam and the Virgin Islands.

(2) The term "unit of general government" excludes single purpose or special purpose units of local government such as school districts or water districts.

(c)(1) "Entitlement lands" are lands owned by the United States which are:

(i) Within the National Park System including wilderness areas;

(ii) Within the National Forest System including wilderness areas and also including those areas of Superior National Forest, Minnesota, set forth in 16 U.S.C. §§ 577d and 577d-1 (1970);

(iii) Administered by the Secretary of the Interior through the Bureau of Land Management;

(iv) Water resource projects administered by the Bureau of Reclamation or Corps of Engineers; or

(v) Dredge disposal areas administered by the Corps of Engineers.

(2) "Entitlement lands" do not include:

(i) Lands which were owned or administered by State and local governments which at time of acquisition by the Federal government were not subject to State and local taxes.

(ii) Any land for which any money was paid to a unit of local government pursuant to the Act of August 28, 1937 (50 Stat. 875) or the Act of May 24, 1939 (53 Stat. 753) in that fiscal year.

(d) "Money transfers" means those money or cash payments made by or through the State government to units of local government pursuant to the laws set forth in section 4 of the Act.

(e) "Authorized officer" means that official within the Bureau of Land Management delegated the authority to carry out the provisions of the Act.

§ 1881.1 Procedures.

§ 1881.1-1 Procedures, general.

(a) The minimum payment shall be $100 to any one unit of local government under both sections 1 and 3 of the Act, in aggregate.

(b) If money actually appropriated by Congress for distribution during any fiscal year is insufficient to provide full payment to each unit of local government, all payments due to eligible recipients in that fiscal year shall be reduced proportionally, to the extent determined necessary by the authorized officer.

§ 1881.1-2 Procedures, Section 1 payments.

(a) The authorized officer shall determine which governments are units of general government eligible to receive payments under section 1 of the Act in accordance with section 6(c) of the Act and the definitions in § 1881.0-5 of these regulations. In resolving questions about the eligibility of any unit of general government and the status of entitlement lands, the authorized officer may consult with the Bureau of the Census, officials

of the appropriate State and local government, and officials of the agency administering the entitlement lands.

(b) In order to determine which units of local government are entitled to receive payments under the act, the authorized officer shall obtain the data necessary for making computations pursuant to the formula in section 2 of the Act as follows:

(1) The amount of entitlement lands within the boundaries of each unit of local government as of the last day of the fiscal year proceeding the fiscal year for which the payment is to be made and the amount of payments made directly to those governments pursuant to the laws listed in section 4 of the Act shall be obtained from the administering Federal agencies;

(2) The amount of money transfers made by the State to eligible units of local government pursuant to the laws listed in section 4 of the Act shall be obtained from the Governor or his designated officials;

(3) The population of each unit of local government shall be obtained from current Bureau of the Census statistics.

(c) The authorized officer shall compute and certify the amount of payment to be made each unit of local government based on (1) the formula and limitations set forth in section 2 of the Act and (2) the amount of actual appropriations.

(d) No computation will be certified by the authorized officer for payment until the Governor of the State in which the unit of local government is located or his delegate has provided the authorized officer with:

(1) a statement of the amount of all money transfers received during the previous fiscal year[2] by each entitled unit of local government from the State from revenues derived under those laws listed in Section 4 of the Act; and

(2) to the extent practicable, a determination that those lands formerly owned or administered by a State or local government and acquired by the Federal Government were subject to State and local real property taxes at the time of conveyance to the Federal Government.

§ 1881.1–3 Procedures, Section 3 payments.

(a) The authorized officer shall make payments to qualified units of local government under section 3 of the Act, provided that the administering agencies supply information as follows:

(1) Acreage or interests in land for which payments are authorized within the boundaries of each qualified unit of local government; and

(2) Such other information as may be required to certify payments to qualified units of local government.

(b) Payments in excess of $100 received by counties shall be distributed by those counties to affected units of local government and affected school districts, in accordance with section 3 of the Act, within 90 days of the receipt of such payment. Distribution shall be in proportion to the tax revenues received by the affected units of local government and school districts in the year prior to acquisition of the entitlement lands by the Federal Government.

(c) A certification by the county involved that appropriate distribution of funds has been made shall be submitted to the authorized officer within 120 days after the date that payments are received.

§ 1881.1–4 Procedures, Absence of information.

The authorized officer shall certify payments under the Act only to the extent sufficient data is available to determine the amount due the qualified units of local government.

§ 1881.2 Use of Payments.

The monies paid to entitled units of local government may be used for any governmental purpose, except as noted in section 1881.1–3(b) of this Part.

§ 1881.3 Protests.

(a) Computation of payments shall be based upon Federal land records, population data from the Bureau of the Census, payments made to units of local government through State government under the laws listed in section 4 of the Act as reported by State Governors, Federal payments made directly to units of local government under the laws listed in section 4 of the Act as reported by the disbursing Federal agency.

(b) Any affected unit of local government may protest the results of the computations of its payment to the authorized officer.

(c) Any protesting unit of local government shall submit sufficient evidence to show error in the computations or the data on which the computations are based.

(d) All protests to the authorized officer shall be filed by the first business day of the calendar year following the end of the fiscal year for which the payments were made.

(e) The authorized officer shall consult with the affected unit of local government and the administering agency to resolve conflicts in land records and other data sources.

§ 1881.4 Appeals.

Any affected unit of local government whose protest has been rejected by the authorized officer may appeal to the Interior Board of Land Appeals pursuant to the provisions of 43 CFR, Part 4.

GUY R. MARTIN,
Assistant Secretary of the Interior.

SEPTEMBER 23, 1977.

[FR Doc.77–28601 Filed 9–28–77;8:45 am]

[2] For Fiscal Year 1977, the transition quarter, July 1, 1976 to September 30, 1976, shall be excluded.

GPO 843-052

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2428]

PART 3300—OUTER CONTINENTAL SHELF OIL AND GAS LEASES

Suspensions and the Five-Year Lease Term

Under the authority of the Outer Continental Shelf Lands Act of August 7, 1953 (43 U.S.C. 1331 et seq.), Subparts 3302 and 3305a of Part 3300, Group 3300, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations are hereby amended as set forth below.

Subpart 3302—Issuances of Leases

1. Subpart 3302 is amended to read as follows:

§ 3302.2 Term.

(a) All oil and gas leases shall be issued for a term of 5 years and so long thereafter as oil or gas may be produced from the leasehold in paying quantities, or drilling or well reworking operations, as approved by the Secretary under § 3305a.1 are conducted thereon. The term of an oil and gas lease is subject to extension as provided in 43 CFR 3305a.4.

* * * * *

Subpart 3305a—Extension of Leases

2. Subpart 3305a is amended to read as follows:

§ 3305a.4 Effect of suspensions on lease term.

In the event that under the provisions of 30 CFR 250.12(c) or (d)(1), the regional oil and gas supervisor of the Geological Survey directs the suspension of either operations or production, or both, with respect to any lease in its primary term, the primary term of the lease will be extended by a period equivalent to the period of the suspension. In the event that under the provisions of 30 CFR 250.12(c) or (d)(1) the supervisor orders or approves the suspension of either operations or production, or both, with respect to any lease extended beyond its primary term, the term of the lease will not be deemed to expire so long as the suspension remains in effect.

Dated: September 28, 1977.

CECIL D. ANDRUS,
Secretary.

[FR Doc.77-29110 Filed 10-3-77;8:45 am]

Published in 42 F.R. 53963, October 4, 1977.

Circular Distribution List

GPO 843-053

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2429]

PART 3520—PREFERENCE RIGHT AND COMPETITIVE LEASES

Miscellaneous Amendments

Accordingly, 43 CFR Part 3520 is amended as follows:

Subpart 3521—Designation of Lands for Lease and Offer of Lands for Lease

1. 43 CFR 3521.3-2(a) is modified by the addition of the subsection "(1)" after *"bidder."* and before "Four" and that subsection (2) be added to read as follows:

§ 3521.3-2 Compliance with notice of competitive lease offer.

(a) (1) * * *

(2) A successful bidder may, in lieu of paying the balance of the bonus bid, substitute pro tanto a certificate of bidding rights acquired in exchange for a relinquishment of an existing coal, sodium, phosphate, potassium, or sulphur lease or preference right lease application which has been deemed suitable for exchange under the provisions of Subpart 3526 of this Title.

* * * * *

Subpart 3523—Relinquishments and Cancellations

2. 43 CFR 3523.1 "Relinquishments" is amended by the addition of subsection "1-3" to read:

§ 3523.1-3 Relinquishments for value.

The terms and conditions under which the Department will accept relinquishment of a mineral lease for value given in return are set out in Subpart 3526 of this Title.

3. 43 CFR Part 3520 is amended by the addition of Subpart 3526 to read as follows:

Subpart 3526—Mineral Leases; Exchange

Sec.

3526.0-1 Purpose.
3526.0-3 Authority.
3526.0-5 Definitions.
3526.1 When exchange provisions apply.
3526.2 Exchange procedures.
3526.3 Issuance of lease or grant of other value.
3526.3-1 Issuance of lease.
3526.3-2 Grant of exchange rights.

§ 3526.0-1 Purpose.

This Subpart is designed to permit a mineral prospecting permittee, or mineral lessee, to relinquish the lease to be acquired under preference right, or the existing mineral lease, in exchange for a mineral lease of other lands of comparable value for sodium, phosphate, potash or sulphur or for the grant of a certificate of bidding rights as herein defined and usable in a competitive coal lease sale, and/or the grant of modifications to an existing coal lease or coal leases adding contiguous coal lands or deposits, when the Secretary concludes that operations on the preference right or outstanding lease would not be in the public interest, and that operations on the lands leased in exchange would be in the public interest.

§ 3526.0-3 Authority.

(a) *Sodium.* Section 24 of the Mineral Leasing Act of 1920, 30 U.S.C. 262.

(b) *Phosphate.* Section 9 of the Mineral Leasing Act of 1920, 30 U.S.C. 211.

(c) *Potash.* Section 3 of the Act of February 7, 1927, 30 U.S.C. 283.

(d) *Sulphur.* Section 3 of the Act of April 27, 1926, 30 U.S.C. 273.

(e) *Provisions.* These statutes authorize the Secretary to lease lands known to contain the mineral in question "through advertisement, competitive bidding, or by such other methods as he may by general regulations adopt. * * *"

(f) *Coal.* Sections 2 and 3 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. 201 and 203.

§ 3526.0-5 Definitions.

For purposes of this Subpart: (a) "Certificate of bidding rights" means a right to apply a credit in an amount equal to the fair market value of a relinquished lease or preference rights against the bonus bid on a competitive coal lease acquired by successful bidding at any subsequent coal lease sale.

(b) "Grant of modifications" means approval by the Secretary for the inclusion of additional coal lands or deposits in an existing coal lease or leases provided that such lands or deposits are contiguous to the lease modified and that the additions do not exceed 160 acres per lease or add acreage exceeding that of each original lease.

§ 3526.1 When exchange provisions apply.

(a) *Invoking the provisions.* The Secretary shall invoke the provisions of this Subpart by notifying the preference right lease applicant or lessee that he is prepared to consider exchange of a mineral lease, coal bidding rights, or grants of coal lease modifications for relinquishment of leasing rights on the lands described in the notice.

(b) *In public interest.* An exchange mineral lease, coal bidding right, or grant of coal lease modifications shall not be issued unless the Secretary finds, after completing the procedures in this Subpart, that the exchange is in the public interest.

(c) *Public interest defined.* For the purposes of this Subpart, an exchange shall be considered in the public interest if the Secretary finds that the benefits of production from the lease or preference right lease would not outweigh the adverse effects, or threat of damage or destruction to agricultural production potential, or scenic, biological, geologic, historic or other public interest values from lease operations. In exercising his discretion to exchange mineral leasing values in the public interest, the Secretary shall consider, but is not limited to consideration of, these elements of the public interest: recreational use; archeological or historic values; threatened or endangered species; proximity of residential or urban areas; study for potential inclusion in the wilderness or wild and scenic rivers systems; and value for public uses, including public highways, airports, and rights-of-way.

§ 3526.2 Exchange procedures.

(a) *Exchange notice.* The Secretary shall notify the preference right lease applicant or lessee when he is prepared to consider an exchange of other mineral leasing values for a tract under lease application or lease.

(1) The exchange notice shall state why the Secretary believes an exchange would be in the public interest.

(2) The exchange notice shall provide that the lease applicant or lessee shall respond by indicating whether he is willing to negotiate for an exchange under this Subpart.

(3) The exchange notice may contain a description of the lands on which the Secretary would offer exchange terms. The preference right lease applicant or lessee's reply may describe the lands on which the lease applicant or lessee would accept an exchange lease, or grant of coal lease modifications.

(4) The Secretary may seek the exchange of any part or all of the land under lease or preference right lease application. More than one lease or preference right lease application may be considered. The impact of a partial or multiple exchange shall be taken into account by the Secretary in determining whether such an exchange is in the public interest.

Published in 42 F.R. 64346, December 23, 1977 - Effective January 3, 1978

Circular Distribution List

(b) *Showing on preference right.* A prospecting permittee shall have previously submitted a timely mineral preference right lease application containing the initial showing required under § 3521.1–1(b) of this Part, and may then have to make the showing required in § 3521.1–1 (c) through (e) of this Part, that he has discovered a valuable deposit of the permit mineral or commercial quantities of coal on the lands in question (as defined in § 3520.1–1(c) of this Part), and for sodium, sulphur and potash that the land is chiefly valuable therefor.

(c) *Right to lease.* If the preference right lease applicant's showing under (b) demonstrates to the Secretary that he has shown that he has a preference right to a lease, the Secretary is authorized in lieu of issuing a lease on the preference right land under § 3521.1–1(h) of this Part to (1) negotiate for the selection of appropriate exchange lands, or if such lands have already been described by the preference right lease applicant or lessee, to establish lease terms on the land to be leased in exchange, or (2) negotiate appropriate coal lease area modifications, and, where appropriate, (3) establish the value of the coal lease bidding rights to be granted in exchange for the relinquishment of the lease or preference right.

(d) *Comparable lease tracts.* (1) The land leased in exchange shall, to the satisfaction of the lease applicant or lessee and the Secretary, be a lease tract containing a deposit of sodium, phosphate, potash, or sulphur of comparable value. A lease tract shall be deemed "comparable" for exchange purposes when the Secretary concludes that the leasehold value of the more valuable tract is less than ten percent greater than the value of the less valuable tract. Coal lands or deposits may only be considered where suitable for addition to existing coal leases under the Secretary's authority to modify coal leases.

(2) The land proposed for inclusion in an exchange lease must be subject to leasing under the provisions of 43 CFR Part 3501.

(e) *Value of coal exchange right.* The exchange right shall be equal to the fair market value of the leasehold to be relinquished. A reply to the Secretary's notice by the preference right lease applicant or lessee indicating willingness to consider an exchange shall also indicate willingness to provide supporting geologic and economic data that will permit the Secretary to establish the fair market value of the relinquished lease.

(f) *Notice and public hearing.* After the prospective exchange lessee and the Secretary agree on the land to be leased in exchange or other terms regarding coal leases, notice of the proposed exchange shall be published in the FEDERAL REGISTER and in a newspaper or newspapers of general circulation in the counties where both the preference right or leased lands and the exchange lease or coal lease modification lands are located. The Notice shall contain notice of a public hearing or hearings to be held not less than 30 days from the date of the Notice in a city or

cities located near the tracts in question. The Notice shall also contain the Secretary's preliminary finding that the exchange is in the public interest. The hearing shall provide for public comment on the merits of the proposed exchange.

§ 3526.3 Issuance of lease or grant of other value.

§ 3526.3–1 Issuance of lease.

(a) *Stipulations.* If, after public hearing, the Secretary by written decision concludes that issuance of the exchange lease or coal lease modifications is in the public interest, he shall proceed to establish lease stipulations for operations on the exchange lease or modified coal lease.

(b) *Lease terms.* (1) The exchange lease shall contain a recital that the lessee thereby quitclaims and relinquishes any right or interest in the lease or preference right lease application exchanged.

(2) It shall also contain a recital of the Secretary's finding that issuance is in the public interest.

(3) In all other respects, the exchange lease or modified coal lease shall be subject to the relevant provisions of 43 CFR Part 3500 and standard lease terms thereunder.

§ 3526.3–2 Grant of exchange rights.

(a) *Decision.* If, after public hearing, the Secretary, by written decision, concludes that the granting of exchange rights is in the public interest, he shall in exchange for a relinquishment of the existing lease or preference right lease application issue a certificate of binding rights for the value of the relinquished leasehold as previously determined or grant approval of coal lease modifications as previously agreed upon.

(b) *Use of bidding right.* As provided in § 3521.3–2(a) of this Part, an exchange right may be used only as payment pro tanto for the balance due on a successful bonus bid in a competitive coal lease sale.

GUY R. MARTIN,
Assistant Secretary of the Interior.

DECEMBER 16, 1977.

[FR Doc.77–36735 Filed 12–22–77;8:45 am]

GPO 844 – 141

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2430]

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

PART 3300—OUTER CONTINENTAL SHELF LEASING

Subpart 3301—Leasing Areas

Under the authority of section 5 of the Outer Continental Shelf Lands Act (43 U.S.C. 1334), Subpart 3301, Park 3300, Group 3300, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations is hereby amended by adding a new § 3301.7 as set forth below.

§ 3301.7 Environmental studies.

(a) The Director shall, except in areas where there has been substantial development, conduct a study of any area or region included in any lease sale in order to establish information needed for prediction, assessment and management of impacts on the human, marine and coastal environments of the Outer Continental Shelf and the nearshore area which may be affected by oil and gas activities in such area or region. Such study shall be planned and carried out in cooperation with the affected coastal States and interested parties and, to the extent possible, shall not duplicate studies done under other laws. To the maximum extent practicable, the Director shall enter into appropriate agreements with the National Oceanic and Atmospheric Administration for the performance of the studies required by this regulation. Cooperative agreements with affected States may be entered into for the purpose of carrying out the studies required in this section.

(b) Any study of an area or region shall be designed to: (1) Provide information on the status of the environment upon which predictions of the impacts of Outer Continental Shelf oil and gas development for leasing decisionmaking may be based, (2) provide information on the ways and extent that Outer Continental Shelf development can potentially impact the human, marine, biological, and coastal areas, (3) ensure that information already available or being collected under the program is in a form that can be used in the decisionmaking process associated with a specific leasing action or with the longer term Outer Continental Shelf minerals management responsibilities, and (4) provide a basis for future monitoring of Outer Continental Shelf operations.

(c) Data collection or other study program activity in connection with the study required by paragraph (a) of this section shall be commenced no later than 6 months after the effective date of this regulation with respect to all sales held either before or to be held within one year of its effective date. For all subsequent sales, the data collection or other study program activity shall be commenced no later than 6 months prior to a lease sale. The Director may utilize information collected in any study prior to the effective date of this section in conducting any such study.

(d) After the leasing and developing of any area or region, the Director shall conduct such additional studies to establish additional information as he deems necessary and shall continue to monitor the human, marine, and coastal environments of such area or region in a manner designed to provide information which can be used for comparison with the results of studies conducted prior to Outer Continental Shelf oil and gas development. This will be done to identify any significant changes in the quality and productivity of such environments, to establish trends in the areas studied, and to design experiments identifying the causes of such changes. Findings from such studies will be used to recommend modifications in practices which are employed to mitigate the effects of Outer Continental Shelf activities and to enhance the data/information base for impact prediction resulting from a single future sale action or cumulative actions.

GUY R. MARTIN,
Assistant Secretary of the Interior.

JANUARY 24, 1978.

[FR Doc. 78-2439 Filed 1-25-78; 12:19 am]

Published in 43 F.R. 3892, January 27, 1978.

Circular Distribution List

☆ U.S. Government Printing Office: 1978-782-636/265 Reg 8

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2431]

PART 3300—OUTER CONTINENTAL SHELF LEASING

Subpart 3301—Leasing Areas

Under the authority of section 5 of the Outer Continental Shelf Lands Act (43 U.S.C. 1334), Subpart 3301, Part 3300, Group 3300, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations is hereby amended by adding a new § 3301.8 as set forth below.

§ 3301.8 Oil and gas information.

(a) For the purposes of this section, an affected State with respect to any program, plan, lease, sale, or other activity proposed, conducted or approved pursuant to the Act, is any State:

(1) The laws of which are declared, pursuant to section 4(a)(2) of the Act, to be the law of the United States for the portion of the Outer Continental Shelf on which such activity is, or is proposed to be conducted;

(2) Which is, or is proposed to be, directed connected by transportation facilities to any artificial island or structure referred to in section 4(a)(1) of the Act;

(3) Which is receiving, or in accordance with the proposed activity, will receive, oil for processing, refining, or transshipment which was extracted from the Outer Continental Shelf and transported by means of vessels or by a combination of means including vessels;

(4) Which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in social, governmental or economic conditions resulting from the exploration, development and production of oil and gas anywhere on the Outer Continental Shelf; or

(5) In which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine and coastal environment in the event of any oilspill, blowout, or release of oil or gas from vessels, pipelines or other transshipment facilities.

(b) The Director shall transmit on a regular basis to any affected State and, upon request, to the executive of any local government whose jusisdiction is included in an area impacted by Outer Continental Shelf activities, a copy of an index which lists, to the best of his knowledge, all relevant actual or proposed Departmental programs, plans, reports, environmental statements, lease sale information, and any other similar type of relevant information. Confidential or proprietary information shall not be included in the index.

(c) The Director shall transmit to any affected State and, upon request, to the executive of any local government whose jurisdiction is included in an area impacted by Outer Continental Shelf activities, a copy of any comment or negative nomination timely filed in response to a Call for Nominations and Comments for a proposed sale and shall also provide relative indications of interest (i.e. high and low) on tracts nominated for sale, except that no particular tract shall be identified with the name or names of any particular party so that it will not compromise the competitive position of any party or parties participating in the nominations.

(d) The Director shall make available data and information in accordance with the requirements of the Freedom of Information Act (5 U.S.C. 552) and of the regulations contained in 43 CFR Part 2 (Records and Testimony). No data or information determined to be exempt from public disclosure under such Act and regulations shall be made available for public disclosure or provided to any affected state or to the executive of any local government.

GUY R. MARTIN,
Assistant Secretary of the Interior.

JANUARY 24, 1978.

[FR Doc. 78-2440 Filed 1-25-78; 12:19 pm]

Published in 43 F.R. 3893, January 27, 1978.

Circular Distribution List

☆ U.S. Government Printing Office: 1978-782-634/264 Reg 8

Circular 0152

federal register

FRIDAY, FEBRUARY 24, 1978
PART III

Bureau of Land Management
Library
Bldg. 50, Denver Federal Center
Denver, CO 80225

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

■

PUBLIC LANDS

Management of Recreation Activities

[4310-84]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2432]

Subchapter F—Outdoor Recreation and Wildlife Management (6000)

Group 6200—Recreation Management

PART 2920—SPECIAL LAND USE PERMITS

PART 6260—VISITOR MANAGEMENT

Rules for Visitor Use—Other Than Developed Recreation Sites

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking establishes a permit and fee system for management of recreation activities on public lands. The Federal Land Policy and Management Act of 1976 provides specific authority for permits for recreation use on public lands.

EFFECTIVE DATE: March 27, 1977.

ADDRESS: Director (370), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Billy R. Templeton, 202-343-8735.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published on pages 5294 to 5296 of the FEDERAL REGISTER of January 27, 1977, to delete recreation permit provisions from 43 CFR Part 2920, establish 43 CFR 6260 as the appropriate location for recreation permit provisions in the Code of Federal Regulations and establish the specific authority for issuing special recreation permits. 43 CFR Part 2920 covers permit procedures for activities not specifically provided for in other law and is no longer the proper Part for special recreation permits.

The principal author of this document is Mr. Larry Young of the Bureau of Land Management, Washington Office Division of Recreation, assisted by the Division of Legislation and Regulatory Management and the Solicitor's Office of the Department of the Interior.

Comments were received through mail, public meetings, and petitions for a 75 day period ending April 13, 1977. Adding together signatures on petitions and comments from letters and meetings, approximately 850 people commented on the proposed rulemaking.

DISCUSSION OF MAJOR COMMENTS—GENERAL COMMENTS

Many comments expressed only general disapproval of any permit and fee system. A permit system is considered necessary to establish management and control over concentrated recreation activities which cause damage to natural resources. Fees are included for two purposes. Filing fees are to cover the cost of processing an application and are nonrefundable because an application must be processed and costs are involved whether it leads to a permit or is rejected. Use fees are charged to ensure the general public a fair return for the use of its land for commercial purposes and for specialized uses which entail exclusive use of certain public lands by a specific person, group, or organization.

Some comments expressed only general approval of a permit and fee system and included no suggestions for improvement.

It was suggested that the requirements of the permit system are not restrictive enough to adequately protect the resources. No specific additional restrictions were suggested and the rules allow the authorized officer enough latitude to take quick action to protect resources in an urgent situation.

Several comments suggested that the filing fee be returned to the area where it was collected as a fund to be used for the improvement of recreation lands and facilities. There is no authority that allows adoption of this suggestion.

It was suggested that since Alaska has many unique characteristics, the rules should be phased in over a five year period. It is recognized that Alaska, because of its remote situation, has some unique characteristics. However, there is also a need to manage concentrated recreation use in Alaska. The regulation gives the authorized officer latitude in decision-making to apply the rules according to resource protection needs in Alaska.

Many comments objected to the amount of authority vested in the authorized officer and held that actions of the authorized officer should be appealable. The authorized officer is the Bureau of Land Management official who has been delegated the authority to carry out the management responsibilities of the Secretary of the Interior on a particular management area of the public lands. The authorized officer may be an Area Manager, a District Manager, a State Director, or the Director of the Bureau of Land Management, depending upon the location and the resource program involved. It will most often be Area and District Managers under these rules. Decisions of the authorized officer are appealable to the Interior Board of Land Appeals and to the courts as appropriate. The issuance of any permit is entirely discretionary with the official who is responsible for the effect of the permitted activity on public lands under that official's care. However, the authorized officer cannot exercise that discretionary power in a capricious manner so as to discriminate against one individual or group without a supportable motive.

SPECIFIC COMMENTS BY SECTION

Section 6263.0-5(a). Comments were received on the definition of "commercial use" as follows:

1. Exclude any noncompetitive event from the regulations.

The exclusion is not made. Many noncompetitive recreation activities may be conducted for commercial purposes and the public is entitled to a fair return for the use of the land.

2. Clarify the regulations with respect to church, scout, and certain camp activities.

No changes are considered necessary. Church groups, scout groups, and similar nonprofit organizations, when not engaged in off-road vehicle competitive events, would only be required to get a permit when their outing involves 50 or more vehicles on public land. Where more than 50 vehicles are involved, such groups may qualify to secure a recreation use permit for the minimum fee of $1 per permit.

3. Do not consider the charging of fees as one of the criteria for determining commercial use.

The term "fee", as used in the definition of "commercial use", is properly used. No change is made.

4. Make an exception for subsistence activities in Alaska.

Subsistence activities in Alaska are not considered recreation use. The definition of "commercial use" is changed as suggested.

Section 6263.0-5(c). The definition of "competitive use" is clarified by deleting the last sentence and adding more precise criteria for determining competitive use.

Section 6263.0-5(e). It was suggested that the term "educational use" should not be confined only to activities of groups with scholastic accreditation. Since the intention of the definition is to separate nonprofit activities by educational institutions from commercial activities and primarily recreation oriented activities, the definition is considered proper as it is now written.

Section 6263.0-5(g). As suggested in several comments, the definition of "special area" is expanded to include primitive and wilderness areas and to give flexibility to the authorized officer to take special measures in areas such as high fire risk areas when needed.

Section 6263.0-5(h). The term "rider/event" is not used in the rulemaking and the definition is deleted.

Section 6263.0-5(j). Many comments were critical of the definition of the term "motorized recreation vehicle"

and its use in the proposed rulemaking. The term is deleted throughout the rulemaking and the term "off-road vehicle" is used instead, where appropriate. Additionally, several comments requested an exclusion for emergency vehicles when used for emergency purposes. The exclusion is effected in the definition of the term "off-road vehicle." Finally, the exclusion of official use vehicles and combat vehicles from the definition of the term "off-road vehicle" has been added to conform the definition to that contained in Executive Order 11989, 42 FR 26959 (May 25, 1977).

Section 6263.0-7. Several comments expressed concern that enforcement authority might be abused by enforcement agents. Personnel who are to be authorized to enforce these rules will be well trained and carefully screened before being entrusted with the authority. However, the scope of the legal sanctions authorized by this section have been limited to failure to pay any fee or failure to obtain a permit when required or operating with a suspended permit. Resource protection programs will continue to put emphasis on the cooperative efforts of the public land user.

Section 6263.1. Many comments suggested that the minimum number of off-road vehicles involved in noncompetitive events for which a permit would be required should be increased from 25 to 50 to accommodate groups who generally travel only on roads and trails and whose recreation pursuits are not as potentially damaging to resources as competitive events. Two comments expressed general disapproval of the special area provisions in the section. It was suggested that the permit system be based upon numbers of people rather than numbers of vehicles involved in an event.

Concentrated recreation use involving large numbers of off-road vehicles has been a major cause of natural resource damage on public lands. Vehicles are required to get people to the public lands for recreation purposes. Therefore, numbers of off-road vehicles is retained as one basis for requiring permits and fees. Also, special area provisions are retained to ensure that the authorized officer will be able to exercise closer control of potentially damaging activities where natural resources have unique features which need protection or where public hazards exist which must be guarded against.

It was determined to raise the minimum number of off-road vehicles, for which permits and fees are required, from 25 to 50 where noncompetitive, noncommercial recreation activities are the objective of a group, because the types of activities engaged in by the groups in the noncompetitive, noncommercial category are less of a hazard to resources than competitive activities.

Section 6263.2. Several comments addressed the time frames established in regard to filing applications. Many commentors felt that the provision for filing 120 days in advance of the proposed use date is unrealistic and should be shortened and that the authorized officer should not be allowed 60 days from the filing date to determine that a permit might be delayed by the need for an environmental impact statement or other reasons. Additionally, comments objected to the requirements for three maps.

The 120 day lead time was adopted to allow 90 days for processing an application and 30 days for the applicant to have a permit in hand prior to the use date. The intent is to serve the user by allowing 30 days in which to prepare for the planned event with no uncertainty as to whether or not a permit would be granted to the applicant. The rulemaking provides the authorized officer with flexibility to accept an application and process it in a shorter time than 120 days if the authorized officer determines that it is practicable to do so. Therefore, the 120 day advance requirement for filing is retained.

The time set up to inform the applicant of a delay in the processing of the application is shortened to 30 days after the filing date or 15 days prior to the proposed use date whichever is earlier. The intent is to serve the applicant by giving the earliest possible notice of problems with the application.

The map requirement is reduced to one map of sufficient scale to allow identification of the use area on the ground.

Additionally, the section is clarified by stating that applications may be mailed in as well as filed in person.

Section 6263.4. It was suggested that fee provisions only apply to profit making organizations. Also, it was suggested that the authorized officer be given complete authority to determine whether or not a fee should be charged.

Fee provisions are established to ensure a fair return to the general public for the use of public lands for commercial purposes and for specialized uses which entail exclusive use of certain public lands by a specific person, group, or organization and where a need for above normal expenditures of public funds is created by the activity. The authorized officer is not given complete authority to determine whether fees should be charged in the case of commercial and competitive events and in special areas because consistency must be maintained from jurisdiction to jurisdiction across the public lands.

Additionally, it was suggested that exclusions be placed in § 6263.4(d) as follows:

1. Exclude dog races in Alaska.
2. Exclude the State of Alaska.
3. Exclude lands selected by Native Corporations under the Alaska Native Claims Settlement Act.
4. Exclude land in reservations which have been revoked by provisions of the Alaska Native Claims Settlement Act.

It is determined that where the Secretary of the Interior has the management responsibility for the public lands, the rules needed by the Bureau of Land Management to properly carry out that responsibility must apply to all lands under its jurisdiction. This approach will protect the values important to the Native Corporations as well as the values important to the general public. Dog races are competitive events which result in concentrated recreation use and therefore should not be excluded from these rules.

Section 6263.5. Section 302(c) of the Federal Land Policy and Management Act of 1976 requires an administrative finding of a violation where any term or condition of a permit before a permit may be revoked or suspended. However, it provides that a permit may be suspended without an administrative finding of a violation where necessary to protect health or safety or the environment. The regulations have been changed to reflect this authority.

There were objections to the provision in 6263.5(a)(4) allowing access to documents and records of a permittee for three years after a permit is terminated. Several comments asked clarification of the bonding provisions relating to when a bond is required and how the amount of the bond is established. Many comments expressed disapproval of any bonding or insurance provisions.

Regarding the examination of records and documents after a permit has terminated: this is a standard procedure on operations involving Federal permits, licenses, leases, and contracts where money is involved. With regard to protection of the permittee under the Freedom of Information Act: the authorized officer only reserves the right to examine the records; therefore, the records would not be subject to exposure under the Act unless irregularities in the records resulted in a court action. In that event, the records would be exposed by the court.

Regarding bonding provisions: the authorized officer will decide whether a bond is required and how large the bond shall be. The decision will be based upon the kind of recreation activity proposed, what the effect of the proposed activity might be on the lands involved, and what costs of rehabilitation may be anticipated as a result of the proposed activity. In the case of a payment bond it is based upon the amount of the use fee involved.

Bonding and insurance requirements are necessary for several reasons. Bonding assures the public that its tax money will not have to be used to rehabilitate public lands damaged by special interests who do not fulfill the obligations of their permits. Bonds are released expeditiously to permittees who comply with the terms of their permits.

Insurance requirements assure the public that its tax money will not have to be used to pay for lawsuits filed by recreation seekers who are injured or suffer equipment losses while voluntarily engaging in high risk events on public lands. Participants in permitted recreation events have a right to expect the sponsors of high risk events to be properly bonded and insured to protect the participants.

Accordingly, Parts 2920 and 6260, Chapter II, Title 43 of the Code of Federal Regulations are amended as set forth below.

NOTE.—The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an economic impact analysis under Executive Order 11821 and OMB Circular A-107.

Dated: February 16, 1978.

GUY R. MARTIN,
Assistant Secretary of the Interior.

PART 2920—SPECIAL LAND USE PERMITS

§ 2920.0-50 [Amended]

§§ 2920.0-2—2920.7 (Subpart 2924) [Deleted]

1. Part 2920 is amended by deleting § 2920 is amended by deleting § 2920.0-5(e), and Subpart 2924.

PART 6260—VISITOR MANAGEMENT

2. Part 6260 is amended by adding Subpart 6263 to the table of sections as follows:

* * * * *

Subpart 6263—Rules for Visitor Use—Other Than Developed Recreation Sites

Sec.

6263.0-1 Purpose.

6263.0-2 Objective.

6263.0-3 Authority.

6263.0-5 Definitions.

6263.0-7 Enforcement.

6263.1 Permits required.

6263.1-1 Public lands, general.

6263.1-2 Special areas.

6263.2 Applications.

6263.3 Issuance of permits.

6263.4 Fees.

6263.5 Terms.

3. Part 6260 is amended by adding Subpart 6263 to read as follows:

Subpart 6263—Rules for Visitor Use—Other Than Developed Recreation Sites

§ 6263.0-1 Purpose.

This subpart sets forth the procedures for authorizing certain recreational uses of lands and waters administered by the Bureau.

§ 6263.0-2 Objective.

To establish a permit and fee system for certain recreation uses of lands and waters administered by Bureau.

§ 6263.0-3 Authority.

The rules in this subpart are issued pursuant to: 43 U.S.C. 1201; 43 U.S.C. 1701 et seq.; 43 U.S.C. 1374; 43 U.S.C. 1181a; 16 U.S.C. 460(1-6a); 16 U.S.C. 670g-n; 16 U.S.C. 1271-1287; 16 U.S.C. 1241-1249.

§ 6263.0-5 Definitions.

For the purposes of this subpart:

(a) "Commercial use" is recreational use of the public lands for business or financial gain. When any permittee, employee or agent of a permittee, operator, or participant makes or attempts to make a profit, salary, increase his capital worth, advance or promote his business or financial standing, or supports, in any part, other programs or activities from amounts received from or for services rendered to customers or participants in the permitted activity, as a result of having the special recreation permit, the use will be considered commercial. Subsistence activities of Alaskan natives in Alaska are not considered recreational use. The collection by a permittee or his agent of any fee, charge, or other compensation which is not strictly a sharing of, or is in excess of, actual expenses incurred for the purposes of the activity or use shall make the activity or use commercial. Use by educational and therapeutic institutions is considered commercial when the above criteria are met. Profit making organizations are automatically classified as commercial, even if that part of their activity covered by the permit is not profit making. Nonprofit status of any group or organization under the Internal Revenue or Postal Laws or regulations does not in itself determine whether an event or activity arranged by such a group or organization is noncommercial. Any person, group, or organization seeking to quality as noncommercial shall have the burden of establishing to the satisfaction of the authorized officer that no financial or business gain will be derived from the proposed use.

(b) "Actual costs or expenses" are costs or expenses necessarily incurred for the permitted activity or use. These terms include, but are not limited to, the actual costs of such items as expendable equipment and supplies. Actual costs or expenses will not include any salaries, profit, increase of capital worth, allowances, or subsidies of any other activities of the permittee or sponsor, the purchase or amortization of nonexpendable supplies or equipment, any allowance for undersubscribed events, or any monetary compensation for sponsors or participants.

(c) "Competitive use" is any formally organized or structured use, event, or activity on public land in which there are the elements of competition between two or more contestants, registration of participants, and/or a predetermined course or area is designated. The term also applies to one or more individuals contesting an established record such as speed or endurance.

(d) An "event" is a single, structured, organized, consolidated, or scheduled meeting or occurrence for the purpose of recreational use of the public lands. An event may be composed of several activities.

(e) "Educational use" is use by an institution which has been recognized as educational by Federal, State, or local government bodies, or regional accrediting bodies. Such use must have learning as the major objective, and there must be a teacher-pupil relationship present. National regional, State, or local accreditation will normally qualify a school as noncommercial, but such accreditation in and of itself does not assure noncommercial status.

(f) An "operator" is a group, association, individual, corporation, or organization which provides recreational services.

(g) A "special area" is an area established as a component of the National Trails System, the National Wild and Scenic Rivers System, the National Wilderness System, an area covered by joint agreement between the Bureau of Land Management and a State government as provided for in Title II of the Sikes Act, or any other area where the authorized officer determines that the resources require special management and control measures for their protection.

(h) A "User day" is any calendar day, or portion thereof for each individual accompanied or serviced by an

operator or permittee on the public lands. Passenger day is synonymous with user day.

(i) An "off-road vehicle" is any motorized vehicle capable of or designed for, travel on or immediately over land, water, or other natural terrain excluding: (1) any nonamphibious registered motorboat; (2) any military, fire, emergency, or law enforcement vehicle while being used for emergency purposes; (3) any vehicle whose use is specifically authorized by the authorized officer or otherwise officially approved; (4) official use; or (5) any combat or combat support vehicle when used in times of natural defense emergencies.

§ 6263.0-7 Enforcement.

Failure to pay any fee or failure to obtain a permit required by this subpart or operating with a suspended permit shall be punishable pursuant to the Federal Land Policy and Management Act of 1976, the Land and Water Conservation Fund Act, the Wild and Scenic Rivers Act, the National Trails Act, the Sikes Act, and other appropriate laws when applicable.

§ 6263.1 Permits required.

§ 6263.1-1 Public lands, general.

Special recreation permits are required for (a) commercial use, (b) competitive use, (c) off-road vehicle events involving 50 or more vehicles, and (d) special area use where the authorized officer determines the criteria of the Land and Water Conservation Fund Act, the Sikes Act, the Wild and Scenic Rivers Act, Federal Land Policy and Management Act, the Taylor Grazing Act, or National Trails Act requires their issuance.

§ 6263.1-2 Special areas.

With the exception of use in special areas, special recreation permits are not required for recreational use by individuals, or individual immediate families. Notice will be given in the FEDERAL REGISTER and regional news media when special recreation permits are required for recreational use other than commercial, competitive, and off-road vehicle use in a special area. Access points in special areas will also be posted notifying the public of required permits for recreational use, other than commercial, competitive, and off-road vehicle use.

§ 6263.2 Applications.

(a) *Forms and maps.* Applications for special recreation permits shall be made to the authorized officer on forms approved by the Director, Bureau of Land Management. Applications shall include a map of sufficient scale and detail to allow identification of the proposed use area on the ground. The authorized officer may waive the requirement for maps where appropriate.

(b) *Supplemental information.* The authorized officer may require the applicant to submit supplemental information in sufficient detail to evaluate the impact of the proposed event upon the lands and environment, including measures the applicant would take to mitigate impacts on the lands and environment.

(c) *Filing.* (1) The application shall be filed in the office of the Bureau having jurisdiction over the lands to be used. The application shall be filed a minimum of 120 days in advance of intended use unless a shorter time is authorized by the authorized officer. Applications may be filed by mail or in person. (2) Within 30 days of the filing date or within 15 days of the desired use date, which ever is earliest, the authorized officer will inform the applicant if the decision on issuing the permit will be delayed. (3) The authorized officer may establish a maximum time by which applications will be accepted prior to date of proposed use.

§ 6263.3 Issuance of permits.

The approval of an application and subsequent issuance of a special recreation permit is discretionary with the authorized officer.

§ 6263.4 Fees.

(a) *Filing fees.* Applicants for special recreation permits for commercial or competitive uses shall include with their application a $10 nonrefundable filing fee.

(b) *Use fees.* (1) Commercial use—a minimum of $25.00 is required for use of not in excess of 100 user days. Payment for use in excess of 100 user days shall be in the amount of $25.00 each additional 100 user days or fraction thereof. (2) Competitive use—the fee is five percent of the gross receipts, $1.00 per participant per day or $10.00 whichever is greater. When use is both commercial and competitive, the competitive fee shall be charged. (3) Special area use—fees may be required for special area uses by other than commercial, competitive, and off-road vehicle users where the authorized officer determines that such charges are consistent with the Land and Water Conservation Fund Act. A minimum fee of $1.00 will be charged for each permit for such use. (4) Off-road vehicle use—a minimum fee of $1.00 will be charged for the permit for each event. (5) The authorized officer may charge larger fees than these minimums consistent with charges made for similar uses by other organizations and governmental agencies in the region of use. (6) Any change in established fees will be made in accordance with section 304 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734).

(c) *Payment of use fees.* (1) Payment of fees will be required at the time a permit is issued. (2) Where the amount of intended use cannot be precisely determined, the fee will be based on an estimation and payment will be required of that amount. The fee will be adjusted, based on actual use, after use is made. Refunds will be made or additional payment will be required to the extent the payment requirement for actual use varies from the initial amount paid by $10.00. (3) If an applicant is unable to pay the fee in advance, the authorized officer may allow the posting of a payment bond or other guarantee in an amount equal to the actual or estimated fee. The authorized officer will establish a payment date which is no later than 15 days following the use period.

(d) *Exceptions, exclusions, and exemptions.* (1) Nothing contained herein shall authorize Federal hunting, trapping, or fishing licenses, permits, or fees. (2) Fees under provisions of this part shall not be charged and permits shall not be required for commercial or other activities not related to recreation. Permits may be required but fees shall not be charged for uses including, but not limited to, organized tours or outings conducted for educational or scientific purposes related to the resources of the area visited by bona fide institutions established for these purposes. (3) Applicants for waiver of fees on this basis will be required to provide documentation of their official recognition as educational or scientific institutions by Federal, State, or local government bodies and will also be required to provide a statement as to the purposes of the visit proposed. (4) The use of areas for which a fee waiver is requested must relate directly to scientific or educational purposes. (5) No fee shall be charged for those special recreation permits required for: (i) Any hospital patient actively involved in medical treatment or therapy in the area visited; (ii) educational and therapeutic institutions that are not commercial; and (iii) individuals, and individual immediate families except in certain special areas. The authorized officer may determine that permits and fees are unnecessary where an event begins and ends on non-public lands, traverses less than one mile of public lands, and poses no threat of significant damage to public resource values.

§ 6263.5 Terms.

(a) *General.* (1) The authorized officer may suspend a special recreation permit if necessary to protect public health, public safety, or the environment. The term of the permit shall continue to run during any such suspension. (2) Permits may be issued for

a day, season of use, or such other time period considered appropriate by the authorized officer for the use involved. (3) A special recreation permit will not be issued for an area larger than the authorized officer determines is necessary for the contemplated use. The land may be surveyed or unsurveyed. (4) The operator or permittee will allow the authorized officer, or other duly authorized representative of the Bureau, to have access to and the right to examine any directly pertinent books, documents, papers, and records of the operator or permittee involving transactions related to the permit. The operator or permittee also will allow the authorized officer, or other duly authorized representative of the Bureau, to have access to and the right to examine any directly pertinent books, documents, papers, and records of any employee or agent of the permittee or operator. These allowances and rights terminate 3 years after the expiration of the permit.

(b) *Stipulations.* A special recreation permit will contain such stipulations as the authorized officer considers necessary to protect the lands and resources involved and the public interest in general.

(c) *Bonds.* In addition to a payment bond, the authorized officer may require the posting of a cash or surety bond or other guarantee in such form and in such amount as the authorized officer determines to be sufficient to defray the costs of restoration and rehabilitation of the lands affected by the permitted use. Bonds and guarantees will be returned to the permittee upon satisfactory compliance with all permit stipulations, including restoration and rehabilitation requirements.

(d) *Insurance.* The authorized officer shall require all commercial and competitive applicants, and may require other applicants, to obtain and submit a property damage, personal injury, and public liability insurance policy which he judges sufficient to protect the public and the United States. The policy shall name the United States Government as a co-insured and stipulate that the authorized officer of the Bureau of Land Management will be notified 30 days in advance of the termination or modification of the policy.

(e) *Liability.* The permittee shall indemnify the United States against any responsibility or liability for damage, injury, or loss to persons and property which may occur during the permitted use period or as a result of such use.

(f) *Violation of law.* The conviction of a violation of any Federal or State law or regulation concerning the conservation or protection of natural resources, the environment, endangered species, or antiquities that is related to said special recreation permit may result in the cancellation of the permit.

[FR Doc. 78-4761 Filed 2-23-78; 8:45 am]

would you like to know

if any changes have been made in certain titles of the CODE OF FEDERAL REGULATIONS without reading the Federal Register every day? If so, you may wish to subscribe to the "Cumulative List of CFR Sections Affected," the "Federal Register Index," or both.

Cumulative List of CFR Sections Affected
$10.00
per year

The "Cumulative List of CFR Sections Affected" is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register, and is issued monthly in cumulative form. Entries indicate the nature of the changes.

Federal Register Index $8.00
per year

Indexes covering the contents of the daily Federal Register are issued monthly, quarterly, and annually. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

Note to FR Subscribers: FR Indexes and the "Cumulative List of CFR Sections Affected" will continue to be mailed free of charge to regular FR subscribers.

Mail order form to:
Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

There is enclosed $_____ for _____ subscription(s) to the publications checked below:

..... **CUMULATIVE LIST OF CFR SECTIONS AFFECTED ($10.00 a year domestic; $12.50 foreign)**

..... **FEDERAL REGISTER INDEX ($8.00 a year domestic; $10.00 foreign)**

Name _____

Street Address _____

City _____ **State** _____ **ZIP** _____

Make check payable to the Superintendent of Documents

☆ GPO: 1976—O-58-000

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2433]

RANGE MANAGEMENT AND TECHNICAL SERVICES

Grazing Administration and Trespass

1. Group 4200 is deleted from Subchapter D, Chapter II, Title 43 of the Code of Federal Regulations.

2. Part 4130 of group 4100 is recodified as group 4200 and 4300 as set forth below:

Group 4200—Grazing Administration; Alaska; Livestock

PART 4200—GRAZING ADMINISTRATION; ALASKA; LIVESTOCK

Subpart 4200—Grazing Administration; Alaska; Livestock; General

Sec.
4200.0-2 Objectives.
4200.0-3 Authority.
4200.0-5 Definitions.

Subpart 4210—Conditions

4210.1 Grazing districts.
4210.2 Land subject to lease.
4210.3 Qualifications of applicants.
4210.4 No right acquired by applicant prior to lease.

Subpart 4220—Procedures

4220.1 Applicants.
4220.2 Application for lease.
4220.3 Maximum number of stock.
4220.4 Annual rental.
4220.5 Reduction in excessive leased area.
4220.6 Free grazing permits.
4220.7 Leases.
4220.8 Stock driveways; crossing permits; quarantine regulations.
4220.9 Range improvements.

Subpart 4230—Disposition of Leased Lands

4230.1 Settlement, location, and acquisition.
4230.2 Mineral prospecting, location, and purchase.

Subpart 4240—Protests, Hearings, and Appeals

4240.1 Protests.
4240.2 Hearings.

AUTHORITY: Taylor Grazing Act of 1934, as amended (43 U.S.C. 315, 315(a)-315(r)), section 4 of the act of August 28, 1937 (43 U.S.C. 1181(d)), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

Subpart 4200—Grazing Administration; Alaska; Livestock; General

§ 4200.0-2 Objectives.

The beneficial utilization of the public lands in Alaska for the purpose of livestock grazing shall be conducted in such manner as may be considered necessary and consistent with the purposes of the act but shall be subordinated to the development of their mineral resources, to their use for agriculture, to the protection, development, and utilization of their forests and to the protection, development, and utilization of such other resources as may be of greater benefit to the public.

§ 4200.0-3 Authority.

The act of March 4, 1927, as amended (43 U.S.C. 316, 316a-316o), authorizes the Secretary of the Interior to establish grazing districts upon any public lands in Alaska, surveyed or unsurveyed, outside of the Aleutian Islands Reservation, outside of national forests and other reservations administered by the Secretary of Agriculture and outside of national parks and monuments, and to lease such lands for the grazing of livestock thereon. Section 316f provides that a lease may be made for such term as the Secretary deems reasonable, but not to exceed 55 years, taking into consideration all factors that are relevant to the exercise of the grazing privileges.

§ 4200.0-5 Definitions.

As used in this subpart:

(a) "Secretary" means Secretary of the Interior;

(b) "Director" means Director, Bureau of Land Management;

(c) "Authorized officer" or "manager" means the designated official of the Bureau of Land Management, in whose district the lands involved are situated, who has been delegated the authority to issue grazing leases;

(d) "The act" means the act of March 4, 1927, as amended (43 U.S.C. 316, 316a-316o);

(e) "Person" means individual, partnership, corporation, or association;

(f) "Native" means any member of the aboriginal races inhabiting Alaska, of whole or not less than half blood;

(g) "District" means any grazing district established under the act;

(h) "Animal unit month" means the forage consumed or grazing privileges represented by the grazing of one cow or its equivalent for 1 month. For the purpose of this definition, one cow shall be condsidered the equivalent of one horse, or five sheep or five goats.

Subpart 4210—Conditions

§ 4210.1 Grazing districts.

(a) *Establishment.* Pursuant to the act, grazing districts are hereby established, the boundaries of which shall be coextensive with the boundaries of the public land districts in Alaska.

(b) *Leases on acreage basis.* Grazing leases will be granted only for such areas as may be deemed adequate and usable according to the needs of the lessee. Leases will provide for grazing on a definite area, and on an acreage basis, except where peculiar local conditions or the difficulties of administration make more practicable a lease based on the number of livestock to be grazed.

§ 4210.2 Lands subject to lease.

Vacant, unreserved, and unappropriated public lands are subject to lease. Where these lands are embraced within the natural grazing grounds or routes of migration of animals such as caribou or moose, or have other important values for wildlife, the lands may be leased, in the discretion of the manager, subject to such special terms and conditions as may be determined. Except as to those reservations described in § 4200.0-3 public lands within the boundaries of a grazing district which have been withdrawn for any purpose may be leased with the prior consent of the Department or agency having administrative jurisidiction thereof and subject to such additional terms and conditions as such Department or agency may impose.

§ 4210.3 Qualifications of applicants.

An applicant for a grazing lease is qualified if the applicant:

(a) Is a citizen of the United States, or

(b) Has on file before a court of competent jurisdiction a valid declaration of intention to become a citizen, or a valid petition for naturalization, or

(c) Is a group, association, or corporation organized under the laws of the United States or of any State or Territory thereof, authorized to conduct business in Alaska, and the controlling interest in which is vested in persons who would be qualified under either paragraph (a) or (b) of this section.

Published in 43 F.R. 29061, July 5, 1978 - Effective August 4, 1978.

Circular Distribution List

§ 4210.4 No right acquired by applicant prior to lease.

The filing of an application will not segregate the land applied for from application by other persons for a grazing lease, or from other disposition under the public land laws. As the issuance of a lease is discretionary, the filing of an application for a lease will not in any way create any right in the applicant to a lease, or to the use of the lands applied for pending the issuance of a lease. Any such unauthorized use constitutes a trespass.[1]

Subpart 4220—Procedures

§ 4220.1 Applicants.

(a) *Classes of applicants and preference.* Applicants for grazing leases shall be given preference in the following order:

(1) Natives.

(2) Bona fide settlers.

(3) Other qualified applicants.

(b) *Assertion of preference rights.* Any person claiming a preference right to a lease under paragraph (a) of this section must furnish with the application required under § 4220.2(a) a statement setting forth the facts on which such claim is made.

§ 4220.2 Application for lease.

(a) *Form used.* An application for grazing lease must be executed in duplicate on a form approved by the Director, and filed with the manager.

(b) *Schedule of operations.* The application must be accompanied by a schedule of the applicant's proposed annual program to develop and increase the number of livestock which will be grazed on the land, and showing the applicant's need for all the land applied for, to provide forage for the maximum number of livestock which the applicant intends to graze thereon.

(c) *Financial responsibility.* The applicant, upon request by the manager, must also furnish evidence of his financial responsibility consisting of a showing that he has the financial means or has made arrangements with an established financial institution to provide the capital necessary to commence and maintain his proposed schedule of operations.

§ 4220.3 Maximum number of stock.

The lease will indicate the maximum number of stock which may be grazed on the leased area, based on the condition of the range and its accessibility for summer and winter feeding. The manager may adjust the maximum number from time to time as the condition of the range may warrant.

§ 4220.4 Annual rental.

(a) *Amount.* Unless otherwise provided, each lessee shall pay to the Bureau of Land Management such rental per acre, per head, or per animal unit month, as may be determined to be a fair charge for grazing of livestock on the leased land. The rental under any grazing lease may be adjusted every 3 years. The date for making the annual payment will be specified in the lease. If the rental is to be paid according to the number of animals grazed, no charge will be made for the natural increase of grazing animals until the beginning of the following lease year.

(b) *Adjustment or waiver.* The manager, if he determines such action to be in the public interest by reason of: (1) depletion or destruction of the range by any cause beyond the control of the lessee, or (2) calamity or disease causing wholesale destruction of or injury to livestock, may grant an extension of time for making payment, or reduce or waive the grazing fee under a lease so affected. An application for the desired relief should be filed with the manager and should state all pertinent details and itemize the losses sustained.

(c) *Payment.* The first rental payment required and the return of the proposed lease duly executed by the prospective lessee shall be made within 30 days of receipt of the lease form by the prospective lessee; if the rental is not paid or the lease is not returned within the prescribed time, the offer shall be null and void and of no effect, and all rights of the prospective lessee thereunder or under the application upon which it is based shall be considered as terminated. Subsequent rental payments for succeeding lease periods are payable in advance. In the event such payment is not received in the proper office by the last day of the current lease period or within the time prescribed in the billing notice whichever is the later, the case shall be considered canceled and all rights terminated thereunder as of the end of such current lease period; except the lease shall not terminate if the lessee submits payment to the proper office within a grace period of 60 days following the last day of the current lease period together with a showing satisfactory to the authorized office that the delay in rental payment was for unavoidable reasons and that termination of the lease would cause undue hardship to the lessee.

§ 4220.5 Reduction in excessive leased area.

Whenever, in the opinon of the manager, the leased land is excessive for the number of livestock to be grazed by the lessee, the manager may, after 30 days' notice to the lessee, reduce the lease area to the extent necessary, and the annual rental, if on an acreage basis, shall be reduced proportionately, effective at the beginning of the next lease year.

§ 4220.6 Free grazing permits.

Any person may file application in duplicate on a form approved by the Director, for a permit to graze, free of charge, not to exceed the number of livestock whose products are consumed or whose work is directly and exclusively used by the applicant or his family, for a term of not more than 1 year.

§ 4220.7 Leases.

(a) *Issuance of lease.* If the application is complete and it is determined that a lease should be issued, the manager will prepare a proposed lease, with necessary copies, on a form approved by the Director, for execution by the applicant. The forms, signed by the applicant, must be forwarded promptly to the manager, together with any required rental payment. The lease will be dated as of January 1 of the year in which it is issued, and the required rental for the first year will be adjusted on a pro rata monthly basis to cover that protion of the year subsequent to the lease issuance.

(b) *Report of grazing operations.* Before April 1 of the second lease year and each lease year thereafter, the lessee shall file with the manager a report, in duplicate, on a form approved by the Director, of his grazing operations during the preceding year.

(c) *Assignments.* No part of the leased land may be subleased. Any proposed assignment of a lease, in whole or in part, must be filed in duplicate with the authorized officer within 90 days of its execution. Assignments will be executed on a form approved by the Director and must be accompanied by the application on a form approved by the Director, executed in duplicate, together with the same showing by the assignee as to qualifications and stock development schedule as would be required of applicants for a new lease, including financial responsibility when specifically requested by the manager. The assignee's acceptance of the lease offered pursuant to the grazing lease assignment shall constitute his acceptance of the lease terms. No assignment will be recognized nor will it confer on the assignee any rights to the leased area until a lease therefor is issued to him.

(d) *Renewals.* An application for renewal of a grazing lease should be executed and filed in duplicate on a form approved by the Director not less than 4 months but not more than 8 months before the expiration date of the lease

[1] It is unlawful for any person to graze any class of livestock on the public lands in grazing districts in Alaska, except under authority of a lease or permit granted under the act. Any person who wilfully grazes livestock in such areas without such authority shall, upon conviction, be punished by a fine of not more than $500. (Sec. 12, act of March 4, 1927; 43 U.S.C., 316k, and notice approved March 7, 1929.)

term. The renewal lease, if issued, will contain such terms and conditions as the manager may determine.

(e) *Rights reserved.* Grazing leases under this part shall be subordinated to and shall be subject to modification or reduction by the manager to the extent necessary to permit:

(1) The protection, development, and utilization, under applicable laws and regulations, of the mineral, timber, water, and other resources on or in the leased lands, including their use for agriculture.

(2) The allowance of applications for and the acquisition of homesites, easements, permits, leases, or other rights and uses, pursuant to applicable public land laws, where the same are in the public interest or will not unduly interfere with the use of the area for grazing purposes.

(3) The temporary closing of portions of the leased area to grazing whenever, because of improper handling of the stock, overgrazing, fire or other cause, such action is deemed necessary to restore the range to its normal condition.

(f) *Restrictions.* No lessee may so enclose roads, trails, or other highways as to disturb public travel thereon, nor interfere with existing communication lines or other improvements on the leased area; he shall not prevent legal hunting, fishing, or trapping on the land, or the ingress of miners, mineral prospectors, and other persons entitled to enter the area for lawful purposes.

(g) *Termination.* A lease may be surrendered by the lessee upon prior written notice filed with the manager, effective upon the date indicated in such notice but no less than 30 days from the date of filing, provided the lessee has complied with the terms and conditions of the lease and has paid all charges due thereunder.

(h) *Cancellation.* A lease may be canceled by the manager if the lease was issued improperly through error with respect to a material fact or facts, or if the lessee shall fail to comply with any of the provisions of the lease or of this part. No lease will be canceled for default in complying with the provisions of the lease or of this part until the lessee has been notified in writing of the nature of the default and has been afforded an opportunity to show why the lease should not be canceled.

§ 4220.8 Stock driveways; crossing permits; quarantine regulations.

(a) *Stock driveways.* The manager may establish stock driveways for the regular crossing of livestock across public lands, in such form and manner as he may determine.

(b) *Crossing permits.* A permit for the crossing of livestock on a stock driveway or other public lands, including lands under grazing lease, may be issued free of charge, upon the filing of an application on a form approved by the Director, in duplicate, with the authorized officer at least 30 days prior to the date the crossing is to begin.

(c) *Quarantine regulations.* Persons driving or transporting stock across any public lands must comply with the quarantine and other sanitary laws prescribed by the Territorial or other proper authorities.

§ 4220.9 Range improvements.

(a) *Permits for construction and maintenance.* Application for a permit to construct and maintain range improvements should be filed with the authorized officer in duplicate on a form approved by the Director. The lessee, upon obtaining an executed permit from the authorized officer, may construct, maintain, and utilize authorized fences, buildings, corrals, reservoirs, wells, or other improvements needed for the exercise of the grazing privileges under the lease. The lessee will be required to comply with the laws of the State of Alaska with respect to the construction and maintenance of fences, but any such fence shall be constructed to permit the ingress and egress of minerals, prospectors for miners, and other persons entitled to enter such area for lawful purposes. The lessee, upon written approval by the authorized officer, may improve by seeding or reseeding within the lease area and may harvest hay or ensilage from such seeded or reseeded areas provided that the forage so produced is used primarily as feed for the lessee's livestock. The authorized officer may approve the assignment of range improvements upon receipt of an application for such assignment on a form approved by the Director.

(b) *Removal of improvements and personal property.* (1) Improvements, fixtures, or personal property (other than livestock) may not be removed from the lands unless all moneys due the United States under the lease have been paid.

(2) If all moneys due have been paid and the lessee, on or before the termination of his lease in whole or in part for any reason, notifies the manager of his determination to leave on the land involved in such termination improvements, the construction or maintenance of which has been authorized, no other person shall use or occupy, under any permit, lease, or entry under any public land law, the land on which such improvements are located, until there has been paid to the person entitled thereto the value of such improvements. If the interested parties are unable to reach an agreement as to such value, the amount may be fixed by the manager. All such agreements, to be effective, must be approved by the manager. The failure of the subsequent permittee, lessee, or entryman to pay the former lessee in accordance with such agreement will be just cause for the cancellation of the permit, lease, or entry.

(3) In the absence of a notice by the lessee in accordance with subparagraph (2) of this paragraph the lessee shall, within 90 days from the date of expiration or termination of the lease, and if all charges due thereunder have been paid, remove all personal property belonging to him, together with any fence, building, corral, or other removable range improvements owned by him. All such property which is not removed within the time allowed shall thereupon become the property of the United States.

Subpart 4230—Disposition of Leased Lands

§ 4230.1 Settlement, location, and acquisition.

Lands leased under the act are not subject to settlement, location, and acquisition under the nonmineral public land laws applicable to Alaska unless and until the authorized officer of the Bureau of Land Management determines that the grazing lease should be canceled or reduced in order to permit, in the public interest and without undue interference with the grazing operations, the appropriate development and utilization of the lands (see § 4220.7(e)) and that the lands are suitable for and otherwise subject to the intended settlement, location, entry, or acquisition. An application on the appropriate form or a notice on a form approved by the Director if applicable to the class of entry contemplated, will be accepted and treated as a petition for determination. Upon such determination and after not less than 30 days' notice thereof to the lessee, the grazing lease may be canceled or reduced to permit the settlement, location, entry or other acquisition of the lands so eliminated from the lease, and the petitioner will be accorded a preference right to settle upon or enter the lands in accordance with the determination.

§ 4230.2 Mineral prospecting, location, and purchase.

Unless otherwise withdrawn therefrom, lands leased under the act are subject to disposition under the mineral leasing laws and to mineral prospecting, location, and purchase under the mining laws, in accordance with the applicable regulations of group 3800 of this chapter.

Subpart 4240—Protests, Hearings, and Appeals

§ 4240.1 Protests.

Protests against an application for a lease should be filed in duplicate, with

the manager, contain a complete disclosure of all facts upon which the protest is based, and describe the lands involved in such protest; and should be accompanied by evidence of service of a copy of the protest upon the applicant. If the protestant desires to lease all or part of the land embraced in the application against which the protest is filed, the protest should be accompanied by an application for a grazing lease.

§ 4240.2 Hearings.

Any lessee of or applicant for grazing privileges may procure a review of any action or decision of the authorized officer by filing with such officer an application for a hearing, stating the nature of the action or decision complained of and the grounds of complaint. The filing of any such application and the conduct of the proceedings before an administrative law judge shall be governed by § 4.450 of this title.

Group 4300—Grazing Administration; Alaska; Reindeer

PART 4300—GRAZING ADMINISTRATION; ALASKA; REINDEER

Subpart 4300—Grazing Administration; Alaska; Reindeer; General

Sec.
4300.0-3 Authority.
4300.0-5 Definitions.

Subpart 4310—Conditions

4310.1 Lands subject to grazing permit.
4310.2 Qualifications of applicants.
4310.3 No right acquired by applicant prior to issuance of grazing permit.
4310.4 Rights reserved; public land laws applicable.
4310.5 Location, settlement, entry, and other disposition of lands included in grazing permit; notice to permittee of disposition and reduction of permitted area.

Subpart 4320—Procedures

4320.1 Application for grazing permit.
4320.2 Filing fee; grazing fee.
4320.3 Term of grazing permit; renewals.
4320.4 Area of use and maximum number of reindeer.
4320.5 Adjustment of grazing permit area.
4320.6 Report of grazing operations; assignments allowed.
4320.7 Termination of grazing permit; cancellation.
4320.8 Crossing permits.
4320.9 Permits for construction and maintenance of improvements; removal.

Subpart 4330—Protests

4330.1 Protests.

Subpart 4340—Trespass

4340.1 Trespass.

AUTHORITY: Taylor Grazing Act of 1934, as amended (43 U.S.C. 315, 315(a)-315(r)), section 4 of the act of August 28, 1937 (43 U.S.C. 1181(d)), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

Subpart 4300—Grazing Administration; Alaska; Reindeer; General

§ 4300.0-3 Authority.

Section 12 of the act of September 1, 1937 (50 Stat. 902), authorizes the Secretary of the Interior to promulgate such rules and regulations as, in his judgment, are necessary to carry into effect the provisions of this act.

§ 4300.0-5 Definitions.

(a) "Reindeer" includes reindeer and such caribou as have been introduced into animal husbandry or have actually joined reindeer herds and the increase thereof.

(b) "Natives" include the native Indians, Eskimos, and Aleuts of whole or part blood inhabiting Alaska at the time of the Treaty of Cession of Alaska to the United States and their descendants of whole or part blood, together with the Indians and Eskimos who, since the year 1867 and prior to September 1, 1937, have migrated into Alaska from the Dominion of Canada, and their descendants of whole or part blood.

(c) "Bureau" means Bureau of Land Management.

(d) "Director" means Director, Bureau of Land Management.

(e) "Authorized Officer" means the Bureau official who has been authorized to issue a reindeer grazing permit.

(f) "The act" means the act of September 1, 1937 (50 Stat. 902).

Subpart 4310—Conditions

§ 4310.1 Lands subject to grazing permit.

Vacant and unreserved and unappropriated public lands are subject to inclusion in a reindeer grazing permit. Where these lands are within the natural migration routes of caribou, or when they have other important wildlife values, the lands may be included in a permit, at the discretion of the authorized officer after consultation with the Alaska Department of Fish and Game, subject to such special terms and conditions as may be jointly agreed upon. Public lands which have been withdrawn for any purpose may also be included in a grazing permit with the prior consent of the Department or agency having administrative jurisdiction thereof, and subject to such additional terms and conditions as such Department or agency may impose.

§ 4310.2 Qualifications of applicants.

An applicant is qualified if he is a native or group, association or corporation of natives as defined by the act of September 1, 1937, organized under the laws of the United States or the State of Alaska, or if the applicant is a native corporation under the provisions of the Alaska Native Claims Settlement Act.

§ 4310.3 No rights acquired by applicant prior to issuance of grazing permit.

The filing of an application will not segregate the land applied for from application by other persons for a grazing permit, or from other disposition under the public land laws. As the issuance of a grazing permit is discretionary, the filing of an application will not create a right for such a permit, or to the use of the lands applied for pending the issuance of a grazing permit.

§ 4310.4 Rights reserved; public land laws applicable.

(a) Grazing permits under this part shall be subordinated to higher uses and subject to modification or reduction by the authorized officer to the extent necessary to allow:

(1) The protection, development and utilization, under applicable laws and regulations, of the mineral, timber, water, and other resources on or in the lands included in the grazing permit, including their use for agriculture.

(2) The allowance of applications for and the acquisition of homesites, easements, permits, leases, or other rights and uses pursuant to applicable public land laws.

(3) The temporary closing of portions of the permitted area to grazing whenever, because of improper handling of the reindeer, overgrazing, fire, or other cause, such action is deemed necessary to restore the range to its normal condition.

(b) No permittee may so enclose roads, trails, or highways as to disturb public travel thereon, nor interfere with existing communication lines or other improvements on the permitted area; he shall not prevent legal hunting, fishing or trapping on the land, or ingress of miners, mineral prospectors, and other persons entitled to enter the area for lawful purposes.

(c) Persons using public lands for grazing of reindeer or for driving of reindeer across such lands must comply with applicable State and Federal laws relative to livestock quarantine and sanitation.

§ 4310.5 Location, settlement, entry, and other disposition of lands included in grazing permit; notice to permittee of disposition and reduction of permitted area.

(a) Lands included in grazing permits under the act are subject to settlement, location, and acquisition under the non-mineral public land laws applicable to the State of Alaska.

(b) Upon settlement location, or entry of any lands included within a

reindeer grazing permit, the permittee shall be notified of the settlement, location, or entry, and the permitted area shall be reduced by the area involved in the settlement, location, or entry.

(c) Unless otherwise withdrawn therefrom lands included in grazing permits under the act are subject to disposition under the mineral leasing laws and to mineral prospecting, location, and purchase under the mining laws, in accordance with the applicable regulations of Group 3800 of this chapter.

Subpart 4320—Procedures

§ 4320.1 Application for grazing permit.

(a) *Form used.* An application for a grazing permit must be executed in duplicate on a form approved by the Director and filed in the Bureau office which has jurisdiction over lands applied for.

(b) *Bureau of Indian Affairs certification.* A certification of reindeer allotment to the applicant, signed by the authorized Bureau of Indian Affairs officer, must accompany the application if the applicant is to receive a herd from the Government.

(c) *Source of reindeer other than Government.* If reindeer are to be obtained from a source other than the Government, the applicant should state the source and show evidence of his purchase or option to purchase.

(d) *Listing of improvements.* With the initial application for any grazing permit issued under this part, the applicant must list by location and description the improvements found in the area under application which are owned by the applicant. Such statement of ownership will be verified by a Bureau of Indian Affairs official prior to submitting it to the Bureau of Land Management. Such existing improvements will be permitted by the terms of the initial grazing permit. Improvements to be constructed subsequent to the issuance of the initial grazing permit must be under permit in accordance with § 4320.9.

§ 4320.2 Filing fee; grazing fee.

A filing fee of $10 must accompany each application for a reindeer grazing permit or application for renewal thereof. No grazing fee will be charged.

§ 4320.3 Term of grazing permit; renewals.

(a) Reindeer grazing permits shall be issued for a maximum term of 10 years, except where the applicant desires a shorter term, or where the authorized officer determines that a shorter period will be in the public interest.

(b) Application for renewal of a grazing permit shall be made not less than 4 months or more than 8 months before the expiration date of the permit. The authorized officer may at his discretion offer the permittee a renewed grazing permit containing such terms, conditions, and of such duration as he determines to be in the public interest.

§ 4320.4 Area of use and maximum number of reindeer.

(a) Permits will restrict grazing use to a definitely described area. Grazing permits will be granted only for such areas as may be deemed adequate and usable according to the needs of the permittee.

(b) The grazing permit will indicate the maximum number of reindeer which may be grazed on the permitted area, based on range conditions, and will be subject to adjustment as the condition of the range indicates.

§ 4320.5 Adjustment of grazing permit area.

The permitted area may be reduced at any time, after not less than 30 days notice to the permittee, when in the opinion of the authorized officer the area is excessive for the number of reindeer grazed thereon. The permit may be increased by the authorized officer on his own motion or upon request of the permittee, when in the opinion of the authorized officer the area is insufficient for the number of reindeer grazed thereon. The permittee shall have opportunity within such notice period to show cause why the area included in the grazing permit should not be adjusted.

§ 4320.6 Report of grazing operations; assignments allowed.

(a) Before April 1 of this second permit year and each year thereafter, the permittee shall file with the authorized officer a report in duplicate of his grazing operations during the preceding year on an approved form.

(b) No part of the land included in the permit may be subleased. Proposed assignments of a permit, in whole or in part, must be filed in duplicate with the authorized officer within 90 days from the date of its execution. Such assignments must contain all of the terms and conditions agreed upon by the parties thereto, accompanied by the same showing by the assignee as to qualifications and a reindeer allotment as is required of applicants for a permit, and by the assignee's statement agreeing to be bound by the provisions of the permit. No assignment shall be effective until approved by the authorized officer.

§ 4320.7 Termination of grazing permit; cancellation.

(a) A grazing permit may be surrendered by the permittee upon prior written notice filed with the authorized officer, effective upon the date indicated in such notice, but not less than 30 days from the date of filing.

(b) A grazing permit may be canceled by the authorized officer if the permit was issued improperly through error with respect to a material fact or facts, or if the permittee shall fail to comply with any of the provisions of the permit or of this part. No permit shall be canceled for default in complying with the provisions of the permit or of this part until the permittee has been notified in writing of the nature of the default and has been afforded an opportunity of not less than 30 days to show why the permit should not be canceled.

§ 4320.8 Crossing permits.

A permit for the crossing of reindeer over public lands, including lands under grazing permit, may be issued free of charge, upon application filed with the authorized officer at least 30 days prior to the date the crossing is to begin. The application must show the number of reindeer to be driven, date of starting, approximate period of time required, and the land to be traversed.

§ 4320.9 Permits for construction and maintenance of improvements; removal.

(a) Application for a permit to construct and maintain range improvements should be filed, in duplicate, with the authorized officer on an approved form. The grazing permittee, upon obtaining a permit from the authorized officer, may construct, maintain and utilize any fence, building, corral, reservoir, well, or other improvement needed for the exercise of the grazing privileges under the grazing permit. The permittee will be required to comply with the laws of the State of Alaska with respect to the construction and maintenance of fences, but any such fence shall be constructed to permit the ingress and egress of miners, prospectors for minerals, and other persons entitled to enter such area for lawful purposes.

(b) The permittee, within 90 days from the date of expiration or termination of the grazing permit, or within any extension of such period, shall be allowed to remove all personal property belonging to him, together with any fence, building, corral, or other removable range improvements owned by him. All such property which is not removed within the time allowed shall thereupon become the property of the United States.

Subpart 4330—Protests

§ 4330.1 Protests.

Protests against an application for a grazing permit shall be filed in duplicate, with the authorized officer; contain a complete disclosure of all facts

upon which the protest is based; and describe the lands involved in such protests. It shall be accompanied by evidence of service of a copy of the protest upon the applicant. If the protestant desires to obtain a grazing permit for all or part of the land embraced in the application against which the protest is filed, the protest shall be accompanied by an application for a grazing permit.

Subpart 4340—Trespass

§ 4340.1 Trespass.

(a) Any use of the Federal lands for reindeer grazing purposes, unless authorized by a valid permit issued in accordance with the regulations in this part is unlawful and is prohibited.

(b) Any person who willfully violates any of the rules and regulations in this part shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by imprisonment for not more than 1 year, or by a fine of not more than $500.

3. Part 4100 is revised to read as follows:

PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

Subpart 4100—Grazing Administration—Exclusive of Alaska; General

Sec.
4100.0-1 Purpose.
4100.0-2 Objectives.
4100.0-3 Authority.
4100.0-5 Definitions.
4100.0-7 Cross-references.

Subpart 4110—Allocation of Grazing Use

4110.1 Mandatory qualifications.
4110.2 Grazing preference.
4110.2-1 Base property.
4110.2-2 Grazing preference allocation.
4110.2-3 Transfer of grazing preference.
4110.2-4 Relinquishment of grazing preference.
4110.3 Changes in available forage.
4110.3-1 Additional forage.
4110.3-2 Decrease in forage.
4110.4 Changes in public land acreage.
4110.4-1 Additional land acreage.
4110.4-2 Decrease in land acreage.
4110.5 Conflicting applications.
4110.6 Interest of Member of Congress.

Subpart 4120—Grazing Management

4120.1 Allotments.
4120.2 Terms and conditions.
4120.2-1 Mandatory terms and conditions.
4120.2-2 Other terms and conditions.
4120.2-3 Allotment management plans.
4120.3 Closure to livestock.
4120.4 Ownership and identification of livestock.
4120.5 State livestock requirements.
4120.6 Range improvements.
4120.6-1 Conditions for range improvements.
4120.6-2 Cooperative agreements.
4120.6-3 Range improvement permits.
4120.6-4 Standards, design, and stipulations.
4120.6-5 Assignment of range improvements.
Sec.
4120.6-6 Removal and compensation for loss of range improvements.
4120.6-7 Contributions.
4120.7 Cooperation in management.
4120.8 Special rules.

Subpart 4130—Authorizing Grazing Use

4130.1 Applications.
4130.2 Grazing permits or leases.
4130.3 Free-use grazing permits.
4130.4 Other grazing authorizations.
4130.4-1 Exchange-of-use grazing agreements.
4130.4-2 Nonrenewable grazing permits or leases.
4130.4-3 Crossing permits.
4130.4-4 Special grazing permits or leases.
4130.5 Fees.
4130.5-1 Payment of fees.
4130.5-2 Refunds.
4130.5-3 Service charges.
4130.6 Changes in grazing use
4130.7 Pledge of permits or leases as security for loans.

Subpart 4140—Prohibited Acts

4140.1 Acts prohibited on public lands.

Subpart 4150—Unauthorized Grazing Use

4150.1 Violations.
4150.2 Notice and order to remove.
4150.3 Settlement.
4150.4 Demand for payment.
4150.5 Impoundment and disposal.
4150.5-1 Notice of intent to impound.
4150.5-2 Impoundment.
4150.5-3 Notice of public sale.
4150.5-4 Redemption.
4150.5-5 Sale.

Subpart 4160—Administrative Remedies

4160.1 Proposed decisions.
4160.1-1 Proposed decisions on permits or leases.
4160.1-2 Proposed decisions on alleged violations.
4160.2 Protests.
4160.3 Final decisions.
4160.4 Appeals.
4160.5 Show cause.

Subpart 4170—Penalties

4170.1 Penalty for violations.
4170.1-1 Failure to use.
4170.1-2 Federal or State laws or regulations.
4170.2 Penal provisions.
4170.2-1 Penal provisions under the Taylor Grazing Act.;
4170.2-2 Penal provisions under the Federal Land Policy and Management Act.

AUTHORITY: 43 U.S.C. 315, 315a-315r,1701 et seq., 1181d.

Subpart 4100—Grazing Administration—Exclusive of Alaska; General

§ 4100.0-1 Purpose.

The purpose of these regulations is to provide for the uniform administration of livestock grazing on the public lands, exclusive of Alaska.

§ 4100.0-2 Objectives.

The objectives of these regulations are to administer livestock grazing on the public lands in a manner that will protect the land and its resources from destruction or unnecessary injury, stabilize the livestock industry dependent on the public lands, and provide for the orderly use, improvement, development, and rehabilitation of the public lands for livestock grazing consistent with multiple-use, sustained yield, environmental, economic, and other objectives as stated in subpart 1725 of this chapter and in section 102 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

§ 4100.0-3 Authority.

(a) The Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a-315r), authorizes the Secretary of the Interior to establish grazing districts and to make provisions for the protection, administration, regulation, and improvement of the public lands. It also authorizes the Secretary to lease lands outside of such districts for grazing purposes upon such terms and conditions as he may prescribe.

(b) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) provides for the management, protection, development, and enhancement of the public lands and directs the Secretary to manage these lands under principles of multiple use and sustained yield in accordance with land use plans.

(c) Executive orders transfer land acquired under the Bankhead-Jones Farm Tenant Act of July 22, 1937, as amended (7 U.S.C. 1012), to the Secretary and authorize administration under the Taylor Grazing Act.

(d) Section 4 of the O&C Act of August 28, 1937 (43 U.S.C. 1181d), authorizes the Secretary, at his discretion, to lease for grazing purposes any revested Oregon and California railroad or reconveyed Coos Bay wagon road grant lands in the State of Oregon which may be so used without interfering with the production of timber or other purposes specified in the O&C Act.

(e) Public land orders, Executive orders, and agreements authorize the Secretary to administer livestock grazing on specified lands under the Taylor Grazing Act or other authority as specified.

§ 4100.0-5 Definitions.

Whenever used in this part, unless the context otherwise requires, the following definitions apply:

(a) The "act" means the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a-315r).

(b) "Allotment" means an area of land designated and managed for grazing of livestock.

(c) "Allotment management plan (AMP)" means a documented program which applies to livestock operations on the public lands, which is prepared

in consultation with the permittee(s) or lessee(s) involved, and which: (1) Prescribes the manner in and extent to which livestock operations will be conducted in order to meet the multiple-use, sustained-yield, economic, and other needs and objectives as determined for the public lands through land use planning; and (2) describes the type, location, ownership, and general specifications for the range improvements to be installed and maintained on the public lands to meet the livestock grazing and other objectives of land management; and (3) contains such other provisions relating to livestock grazing and other objectives as may be prescribed by the authorized officer consistent with applicable law.

(d) "Animal unit month (AUM)" means the amount of forage necessary for the sustenance of one cow or its equivalent for a period of 1 month.

(e) "Authorized officer" means any person authorized by the Secretary to administer regulations in this part.

(f) "Base property" means: (1) Land that has the capability to produce crops or forage that can be used to support authorized livestock for a specified period of the year, or (2) water that is suitable for consumption by livestock and is available and accessible, to the authorized livestock when the public lands are used for livestock grazing.

(g) "Cancellation" means a permanent termination of a grazing permit or grazing lease and grazing preference, or free-use grazing permit or other grazing authorization, in whole or in part.

(h) "Class of livestock" means age and/or sex groups of a kind of livestock.

(i) "Contiguous land" means land that borders or touches upon public land.

(j) "District" means the specific area of public lands administered by a District Manager.

(k) "Grazing district" means the specific area within which the public lands are administered under section 3 of the act. Public lands outside grazing district boundaries are administered under section 15 of the act.

(l) "Grazing fee year" means the year March 1 to the last day of February which is used for billing purposes.

(m) "Grazing lease" means a document authorizing use of the public lands outside grazing districts under section 15 of the act for the purpose of grazing livestock.

(n) "Grazing permit" means a document authorizing use of the public lands within grazing districts under section 3 of the act for the purpose of grazing livestock.

(o) "Grazing preference" means the total number of animal unit months of livestock grazing on public lands apportioned and attached to base property owned or controlled by a permittee or lessee.

(p) "Indigenous animal" means an animal which is or was part of the original fauna of the area in question.

(q) "Land use plan" means a planning decision document which establishes resource allocations and coordinated objectives and constraints for all forms of public land and resource use within the area covered by the plan.

(r) "Livestock" or "kind of livestock" means species of domestic livestock—cattle, sheep, horses, burros, and goats.

(s) "Livestock grazing capacity" means the number of animal unit months of forage available for livestock grazing on a sustained yield basis on the public lands as determined through land use planning.

(t) "Modification" means a change or revision of the terms and conditions of an unexpired grazing permit or lease including changes in kind or class and number of livestock, period(s) of use, and area(s) of use.

(u) "Other lands under Bureau of Land Management control" means those State or private lands controlled by the Bureau of Land Management through lease, agreement, or otherwise.

(v) "Public lands" means any land and interest in land outside of Alaska owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians.

(w) "Range betterment" means on-the-ground rehabilitation, protection, and improvement of the public lands to arrest range deterioration and to improve forage conditions, fish and wildlife, habitat, watershed protection, and livestock production consistent with land use plans.

(x) "Range betterment fund" means the separate account in the Treasury established by section 401(b)(1) of the Federal Land Policy and Management Act of 1976 consisting of 50 per centum of all moneys received by the United States as fees for grazing livestock on public lands.

(y) "Range improvement" means a structure, development, or treatment used to rehabilitate, protect, or improve the public lands to advance range betterment.

(z) "Secretary" means the Secretary of the Interior or his authorized officer.

(aa) "Service area" means the area that can be properly grazed by livestock watering at a certain water. In determining this area, natural and cultural barriers, recognized habits of livestock, proper livestock practices, and range management factors shall be considered.

(bb) "Supplemental feed" means concentrates or harvested feed supplied to livestock to supplement the range forage.

(cc) "Suspension" means temporarily withholding a grazing permit or lease in whole or in part.

§ 4100.0-7 Cross-references.

The regulations in subpart 1784 of this chapter govern advisory boards and the regulations in part 4 of this title govern appeals and hearings.

Subpart 4110—Allocation of Grazing Use

§ 4110.1 Mandatory qualifications.

Except as provided under §§ 4130.3 and 4130.4-3, to qualify for grazing use on the public lands an applicant must be engaged in the livestock business, must own or control land or water base property, and must be:

(a) A citizen of the United States or have properly filed a valid declaration of intention to become a citizen or a valid petition for naturalization; or

(b) A group or association authorized to conduct business in the State in which the grazing use is sought, all members of which are qualified under paragraph (a) of this section; or

(c) A corporation authorized to conduct business in the State in which the grazing use is sought.

§ 4110.2 Grazing preference.

§ 4110.2-1 Base property.

(a) The authorized officer shall find land or water owned or controlled by an applicant to be base property (see § 4100.0-5(f)) if:

(1) It serves as a base for a livestock operation which utilizes public lands within a grazing district; or

(2) It is contiguous land, or noncontiguous land when no applicant owns or controls contiguous land, used in conjunction with a livestock operation which utilizes public lands outside a grazing district.

(b) The authorized officer shall specify the length of time for which land base property shall be capable of supporting authorized livestock during the year, based on the management requirements for the public lands.

(c) An applicant shall provide a legal description, or plat, of his base property and shall certify to the authorized officer that this base property meets the requirements under paragraph (a) and (b) of this section and § 4100.0-5(f).

§ 4110.2-2 Grazing preference allocation.

(a) Grazing preference shall be allocated to qualified applicants following the allocation of the vegetation resources among livestock grazing, wild free-roaming horses and burros, wildlife, and other uses in the land use plans.

(b) Applicants who own or control base property contiguous to or corner-

ing upon public land outside of a grazing district where such public land consists of an isolated or disconnected tract embracing 760 acres or less shall have a preference right for 90 days after the tract has been offered for lease to lease the whole tract.

(c) The animal unit months of grazing preference are attached to: (1) the acres of land base property on a pro rata basis, or (2) water base property on the basis of the livestock grazing capacity within the service area of that water.

§ 4110.2-3 Transfer of grazing preference.

(a) Transfers of grazing preference in whole or in part are subject to the following requirements:

(1) The transferee shall meet all necessary qualifications for a grazing preference under the regulations of this part.

(2) Approval of the transfer shall not disrupt the stability of the livestock industry in the general area within which the public lands involved are located.

(3) The transfer applications under paragraphs (b) and (c) of this section, shall evidence assignment of interest and obligation in range improvements authorized on public lands under § 4120.6 and used and maintained in conjunction with the transferred preference (see § 4120.6-5). The transferee shall accept the terms and conditions of the cooperative agreements and range improvement permits with such modifications deemed necessary by the authorized officer.

(4) The transferee shall accept the terms and conditions of the terminating grazing permit or lease (see § 4130.2) with such modifications as he may request which are approved by the authorized officer or with such modifications as may be required by the authorized officer. Such modifications shall be consistent with the land use plans.

(5) The transferee shall file an application for a grazing permit or lease to the extent of the transferred preference simultaneously with filing a transfer application under paragraph (b) or (c) of this section.

(b) If base property is sold or leased, the transferee shall file with the authorized officer a properly executed transfer application showing the base property and the amount of grazing preference being transferred, in animal unit months, within 60 days of the date of sale or lease. If the transfer application has been timely filed and the requirements under paragraph (a) of this section have been met, the authorized officer may approve the transfer of the grazing preference attached to the affected base property, may approve the assignment of interest and obligation in range improvements on the public lands, and may issue a grazing permit or lease.

(c) If a grazing preference is being transferred from one base property to another base property, the transferee shall file with the authorized officer a properly completed transfer application in advance for approval. The transfer application shall: (1) State the amount of grazing preference being transferred, in animal unit months, (2) include a legal description of the old and new base property, (3) contain the concurrence of any lien holder, and (4) contain the consent of the owner(s) of the base property from which the transfer is to be made, unless the transferor is a lessee of the base property without whose livestock operation a grazing preference would not have been established, in which case the consent of the owner of the base property is not required. If the transfer application has been properly filed and the requirements under paragraph (a) of this section have been met, the authorized officer may approve the transfer of grazing preference between the base properties, may approve the assignment of interest and obligation in range improvements on the public lands, and may issue a grazing permit or lease.

(d) At the date of approval of a transfer, the existing grazing permit or lease shall terminate automatically and without notice to the extent of the transfer.

(e) If an unqualified transferee acquires rights in base property through operation of law or testamentary deposition, such transfer will not affect the grazing preference or any outstanding grazing permit or lease, or preclude the issuance or renewal of a grazing permit or lease based on such property for a period of 2 years after the transfer. However, such a transferee shall qualify under paragraph (a) of this section within the 2-year period or the grazing preference shall be subject to cancellation. The authorized officer may grant extensions of the 2-year period where there are delays solely attributable to probate proceedings.

(f) Failure of the transferee to comply with the regulations of this section shall result in the cancellation of the grazing preference.

§ 4110.2-4 Relinquishment of grazing preference.

Upon written request, the authorized officer shall accept the relinquishment of a grazing preference in whole or in part. No such relinquishment shall be accepted without the written concurrence of any lien holder and the written consent of the owner(s) of the base property to which the preference is attached, unless the applicant is a lessee of the base property without whose livestock operation a grazing preference would not have been established.

§ 4110.3 Changes in available forage.

§ 4110.3-1 Additional forage.

Additional forage may be allocated to qualified applicants for livestock grazing use at the discretion of the authorized officer if this use is consistent with the land use plans.

(a) Additional forage temporarily available for livestock grazing use, including forage which is temporarily available within an allotment because of a change in grazing use under § 4130.6, may be allocated on a nonrenewable basis.

(b) Additional forage permanently available for livestock grazing use shall first be allocated in satisfaction of grazing preferences to the permittee(s) or lessee(s) authorized to graze in the allotment in which the forage is available.

(c) Additional forage permanently available for livestock grazing use over and above the preference(s) of the permittee(s) or lessee(s) in an allotment may be allocated in the following priority to:

(1) Permittee(s) or lessee(s) in proportion to their preferences or in proportion to the permittee's or lessee's contribution or efforts which resulted in increased forage production; or

(2) Other qualified applicants under § 4110.5.

§ 4110.3-2 Decrease in forage.

(a) When authorized grazing use exceeds the amount of forage available for livestock grazing within an allotment on a temporary basis: (1) due to drought, fire, or other natural causes, or (2) to facilitate installation, maintenance, or modification of range improvements, grazing permits or leases may be suspended in whole or in part.

(b) When authorized grazing use exceeds the amount of forage available and allocated for livestock grazing within an allotment or where reduced grazing use is necessary to facilitate achieving the objectives in the land use plans, grazing permits or grazing leases and grazing preferences shall be canceled in whole or in part.

(c) The suspension or cancellation under paragraphs (a) or (b) of this section will be equitably apportioned by the authorized officer or as agreed to among permittees or lessees and the authorized officer. If consistent with resource management needs, the authorized officer may provide the cancellations under paragraph (b) of this section be scheduled over a period not to exceed 3 years with the full cancellation coming in the last year.

§ 4110.4 Changes in public land acreage.

§ 4110.4-1 Additional land acreage.

When land outside designated allotments becomes available for grazing administration by the Bureau of Land

Management, the forage available for livestock grazing may be allocated to qualified applicants at the discretion of the authorized officer if this use is consistent with the land use plans. Grazing use will be allocated under § 4110.5.

§ 4110.4-2 Decrease in land acreage.

(a) Where there is a decrease in public land acreage available for livestock grazing use within an allotment, grazing permits or grazing leases and grazing preferences shall be canceled in whole or in part. The cancellations will be equitably apportioned by the authorized officer or as agreed to among authorized users and the authorized officer.

(b) When public lands are disposed of or devoted to a public purpose which precludes livestock grazing, the permittees and lessees shall be given 2 years' prior notification except in cases of emergency (military defense requirements in time of war, natural disasters, national emergency needs, etc.), before their grazing permit or grazing lease and grazing preference may be canceled in whole. A permittee or lessee may unconditionally waive the 2-year prior notification. Such a waiver shall not prejudice the permittee's or lessee's right to reasonable compensation for the fair market value of his interest in authorized permanent range improvements located on these public lands (see § 4120.6-6).

4110.5 Conflicting applications.

When more than one qualified applicant applies for livestock grazing use of the same public land and/or where additional forage or additional land acreage becomes available, the authorized officer may allocate grazing use of such land or forage consistent with the land use plans on the basis of any of the following factors:

(a) Historical use of the public land (see § 4130.2(d));

(b) Proper range management and use of water for livestock;

(c) General needs of the applicants' livestock operations;

(d) Public ingress and egress across privately owned or controlled land to public lands;

(e) Topography;

(f) Other land use requirements unique to the situation.

4110.6 Interest of Member of Congress.

Title 18 U.S.C. 431-433 (1970) generally prohibits a Member of or Delegate to Congress from entering into any contract or agreement with the United States. Title 41 U.S.C. 22 (1970) generally provides that in every contract or agreement to be made or entered into, or accepted by or on behalf of the United States, there shall be inserted an express condition that no Member of or Delegate to Congress shall be admitted to any share or part of such contract or agreement, or to any benefit to arise thereupon. The provisions of these laws are incorporated herein by reference and apply to all permits, leases, and agreements issued under these regulations.

Subpart 4120—Grazing Management

§ 4120.1 Allotments.

As land use plans are prepared, the authorized officer shall designate allotments where the public lands and other lands under Bureau of Land Management control are suitable and available for livestock grazing.

§ 4120.2 Terms and conditions.

Livestock grazing permits and leases shall contain terms and conditions necessary to achieve the management objectives for the public lands and other lands under Bureau of Land Management control identified in land use plans.

§ 4120.2-1 Mandatory terms and conditions.

(a) The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use, in animal unit months, that can be made in every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock grazing capacity and shall be limited or excluded to the extent necessary to achieve the objectives established for the allotment.

(b) If it has been determined that allotment management plans are not necessary, or if allotment management plans have not been implemented where they are needed, the authorized officer shall incorporate terms and conditions under this section in grazing permits or leases. The authorized officer shall modify these terms and conditions if the condition of the range requires modification of grazing use and may cancel grazing permits or grazing leases and grazing preferences as conditions warrant. These modifications and cancellations may be made at any time and shall be put into full force and effect on the date specified by the authorized officer. See § 4110.3-2.

(c) All permits and leases shall be made subject to cancellation, suspension or modification, as required by land use plans, and subject to applicable law.

(d) All permits and leases shall include the provisions that such permits and leases shall be subject to annual review, and to modification in accordance with applicable law.

§ 4120.2-2 Other terms and conditions.

The authorized officer may:

(a) Specify the class of livestock that will graze on an allotment.

(b) Specify breed or livestock in allotments within which two or more permittee(s) or lessee(s) are authorized to graze.

(c) Authorize the use and direct the placement of supplemental feed, including salt, for livestock on the public lands.

(d) Require permittees or lessees operating under a grazing permit or lease not incorporating an allotment management plan to submit within 15 days after completing their annual grazing use, or as otherwise specified in the permit or lease, a report of the actual livestock grazing use made.

(e) Authorize grazing use by kinds of indigenous animals under specific terms and conditions.

§ 4120.2-3 Allotment management plans.

Grazing management may be applied on allotments through the preparation and implementation of allotment management plans.

(a) An allotment management plan shall be prepared in consultation with the affected permittee(s) or lessee(s), approved by the authorized officer and implemented (see § 4100.0-5(c)). The allotment management plan shall include terms and conditions under § 4120.2-1, may include terms and conditions under § 4120.2-2, and shall prescribe a system of grazing designed to meet specific management objectives. The plan shall include the limits of flexibility within which the permittee of lessee may adjust his operation without prior approval of the authorized officer. The plan shall provide for the collection of data that shall be used to evaluate the effectiveness of the system of grazing in achieving the specific objectives.

(b) Private and State lands shall be included in the allotment management plan if these lands are unfenced and are intermingled with the public lands in the allotment or with the consent or at the request of the party who owns or controls these lands.

(c) Allotment management plans may be revised in consultation with the affected permittee(s) or lessee(s).

(d) If allotment management plans have been prepared, the authorized officer shall incorporate these plans in grazing permits or leases when they are issued. If grazing permits or leases have been issued prior to the preparation of allotment management plans, the authorized officer shall incorporate the allotment management plans in the grazing permits or leases when these plans are completed.

(e) Permittees or lessees operating under a grazing permit or lease incorporating an allotment management plan shall submit within 15 days after completing their annual grazing use, or as otherwise specified in the permit or lease, a report of the actual grazing use made.

(f) Decisions which specify that allotment management plans are incorporated as terms and conditions of grazing permits or leases may be protested and appealed under subpart 4160.

§ 4120.3 Closure to livestock.

When the authorized officer determines that the soil, vegetation, or other resources on the public lands require protection because of drought, fire, or for other similar reasons, he shall temporarily close allotments, or portions of allotments, to grazing by any kind of livestock and for any period of time. The action to be taken by the authorized officer shall be specified in a notice of closure. The notice of closure shall state why the allotments, or portions of allotments, are being closed, shall specify the period of time for which these areas will be closed, and shall describe the resource conditions that must be present before these areas are reopened to grazing. The notice shall be published in a local newspaper and shall be posted at the county courthouse and at a post office near the public land area involved. Written notification shall be delivered personally or by certified mail to those who are authorized to graze livestock on the allotments affected. The notice of closure shall be issued as a final decision in full force and effect under § 4160.3(c) and shall require all owners of livestock affected thereby to remove such livestock in accordance with provisions of the notice. The authorized officer may proceed to impound, remove, and dispose of any livestock found in violation of the closing notice after the closure date specified in the notice in accordance with § 4150.5.

§ 4120.4 Ownership and identification of livestock.

(a) The permittee or lessee shall own or control and be responsible for the management of the livestock which graze the public lands under a grazing permit or lease. If the permittee or lessee does not own the livestock, he shall furnish the authorized officer a document specifying the kind and number of livestock, the brand or other marking the livestock are carrying, and the arrangements which in fact give him control of the livestock. This document shall be approved by the authorized officer prior to placing the livestock on the public lands.

(b) All cattle, horses, and burros over 6 months of age shall carry a brand which has been filed with the authorized officer. All sheep and goats over 6 months of age shall be identified with an earmark, paint brand, or other marking that has been filed with the authorized officer.

(c) The authorized officer may exempt certain livestock from the minimum requirements under paragraph (b) of this section. An alternative method of identifying the livestock satisfactory to the authorized officer shall be used in such instances.

(d) The authorized officer may require counting and/or additional or special marking or tagging of the authorized livestock in order to control unauthorized grazing use or in order to otherwise promote the orderly administration of the public lands.

§ 4120.5 State livestock requirements.

Authorized users shall comply with the requirements of the State in which the public lands are located relating to: branding of livestock; breed, grade, and number of bulls; and health and sanitation requirements.

§ 4120.6 Range improvements.

§ 4120.6-1 Conditions for range improvements.

(a) Range improvements shall be installed, used, maintained, and/or modified on the public lands, or removed from these lands, in a manner consistent with the land use plans.

(b) Prior to installing, using, maintaining, and/or modifying range improvements on the public lands, permittees or lessees shall have entered into a cooperative agreement with the Bureau of Land Management or must have an approved range improvement permit.

(c) The authorized officer may require a permittee or lessee to install, maintain, and/or modify range improvements on the public lands.

(d) When appropriated, one-half of the range betterment funds (see § 4130.5-1(f)) shall be available for use in the District from which the grazing fees were collected for the purpose of on-the-ground rehabilitation, protection, and improvement of public lands. The other one-half of the range betterment funds shall be used for on-the-ground range rehabilitation, protection, and improvement of public lands at the discretion of the Director. The range betterment funds shall be used as directed after consultations with user representatives. See § 4100.0-5 (w), (x), and (y). These funds shall be used for the installation, maintenance, modification, and removal of range improvements including such things as planning, environmental assessment, design, survey, materials, equipment, labor, and supervision related to these improvements.

§ 4120.6-2 Cooperative agreements.

Any permittee or lessee may enter into a cooperative agreement with the Bureau of Land Management for the installation, use, maintenance, and/or modification of range improvements needed to achieve management objectives within his designated allotment. The cooperative agreement shall specify the division of cost or labor, or both, between the United States and permittees or lessees. The United States shall have title to range improvements authorized under cooperative agreements.

§ 4120.6-3 Range improvement permits.

Any permittee or lessee may apply for a range improvement permit to install, use maintain, and/or modify range improvements that are needed to achieve management objectives within his designated allotment. The permittee or lessee shall agree to provide total funding. The range improvement permits are issued at the discretion of the authorized officer. The permittee or lessee shall have title to range improvements authorized under range improvement permits.

§ 4120.6-4 Standards, design, and stipulations.

Range improvement cooperative agreements and permits shall specify the standards, design, and construction and maintenance criteria for the range improvements and shall include additional conditions and stipulations deemed necessary by the authorized officer to facilitate achieving the objectives in the land use plans. Where an existing range improvement is significantly inconsistent with these objectives, the authorization for the improvement may be modified by the authorized officer to reflect needed changes. Upon failure of the permittee or lessee to comply with the standards, design, construction, and maintenance criteria, and/or the conditions and stipulations specified by the authorized officer or failure to comply with the authorized officer's order to modify an existing range improvement, authorization for the improvement may be canceled.

§ 4120.6-5 Assignment of range improvements.

The authorized officer shall not approve the transfer of a grazing preference under § 4110.2-3 nor approve use by the transferee of existing range improvements, unless the transferee has agreed to compensate the transferor for fair market value of his interest in the authorized improvements within the allotment as of the date of transfer. If the parties are unable to agree as to the amount or manner of reasonable compensation, the matter shall be resolved by the authorized officer.

§ 4120.6-6 Removal and compensation for loss of range improvements.

(a) Range improvements shall not be removed from the public lands without authorization.

(b) The authorized officer may require permittees or lessees to remove range improvements which they own

on the public lands if these improvements are no longer serving the purpose for which they were installed or if they fail to meet the criteria under § 4120.6-4.

(c) If grazing permits or grazing leases and grazing preferences are canceled in whole or in part because the public lands are being disposed of or devoted to a public purpose which precludes livestock grazing, the permittees or lessees shall receive fair market value from the United States for their interest in the authorized permanent range improvements located on the public lands (less salvage value) which will no longer be available for livestock grazing.

(d) Permittees or lessees may be allowed a period of 180 days from the date of cancellation of a range improvement permit to salvage material owned by them and to perform such rehabilitation measures as are deemed necessary by the authorized officer.

§ 4120.6-7 Contributions.

The authorized officer may accept contributions of labor, material, equipment, or money for administration, protection, and improvement of the public lands necessary to achieve the objectives of this part.

§ 4120.7 Cooperation in management.

The Bureau of Land Management may cooperate with Federal, State, and/or local governmental entities, institutions, organizations, corporations, associations, and individuals to achieve the objectives of this part.

§ 4120.8 Special rules.

Whenever it appears to a State Director that local conditions within his administrative jurisdiction require a special rule to achieve improved administration consistent with the objectives of this part, he may recommend such a rule for approval by the Director. These recommendations shall be subject to public review and comment, as appropriate, and upon approval shall become effective when published in the FEDERAL REGISTER as final rules. Special rules shall be published in a newspaper within the local area. Copies of the rule shall be sent to those who are authorized to graze livestock in the area where the special rule is applicable.

Subpart 4130—Authorizing Grazing Use

§ 4130.1 Applications.

Applications for grazing permits or leases (active use and nonuse), free-use grazing permits and other grazing authorizations shall be filed timely with the authorized officer at the local Bureau of Land Management office having jurisdiction over the public lands involved.

§ 4130.2 Grazing permits or leases.

(a) The Bureau of Land Management shall offer grazing permits or leases for a term not to exceed 10 years to qualified applicants.

(b) Grazing permits or leases shall be issued to authorize livestock grazing on the public lands and other lands under Bureau of Land Management control. These grazing permits or leases shall include appropriate terms and conditions under § 4120.2. Grazing use under these permits or leases may include active grazing use, nonuse, or a combination of active use and nonuse.

(c) Grazing permits or leases convey no right, title, or interest held by the United States in any lands or resources.

(d) (1) Grazing permits or leases authorizing livestock grazing on the public lands and other lands under BLM control shall be issued for a term of 10 years, unless: (i) The land is pending disposal; (ii) the land will be devoted to a public purpose which precludes grazing prior to the end of 10 years; or (iii) it will be in the best interest of sound land management to specify a shorter term.

(2) Exceptions to the issuance of 10-year permits shall be made on a case-by-case basis. In determining whether the interest of sound land management warrants the issuance of a permit for less than 10 years, the following are elements that the authorized officer shall consider:

(i) Resource conditions;

(ii) Availability of resource and use data;

(iii) Use conflicts;

(iv) Availability of completed land use plans;

(v) Whether significant adverse environmental impacts will result from issuance of a 10-year permit; and

(vi) Expressed desire of applicant for a shorter term.

(3) Grazing permits or leases shall be modified or canceled in accordance with land use planning decisions.

(4) Grazing permits or leases shall be subject to annual review and modification of terms and conditions as appropriate.

(e) Permittees or lessees holding expiring grazing permits or leases shall be given first priority for receipt of new permits or leases if:

(1) The lands remain available for livestock grazing in accordance with land use plans (see subpart 4120);

(2) The permittee or lessee is in compliance with the regulations contained in this part and the terms and conditions of his grazing permit or lease; and

(3) The permittee or lessee accepts the terms and conditions to be included in the new permit or lease by the authorized officer.

§ 4130.3 Free-use grazing permits.

A free-use grazing permit shall be issued to any applicant whose residence is adjacent to public lands within grazing districts and who needs these public lands to support those domestic livestock owned by the applicant whose products or work are used directly and exclusively by the applicant and his family. The issuance of free-use grazing permits is subject to § 4110.5. These permits shall be issued on an annual basis. These permits cannot be transferred or assigned.

§ 4130.4 Other grazing authorizations.

Exchange-of-use grazing agreements, nonrenewable grazing permits, or leases, crossing permits, and special grazing permits or leases have no priority for renewal and cannot be transferred or assigned.

§ 4130.4-1 Exchange-of-use grazing agreements.

An exchange-of-use grazing agreement may be issued to any applicant who owns or controls lands within the exterior boundaries of the allotment in which the land offered in exchange-of-use is located. An exchange-of-use agreement may be issued to authorize use of public land within the allotment to the extent of the livestock grazing capacity of the land offered in exchange-of-use. No fee shall be charged for this grazing use. The exchange-of-use agreement may be issued for a term of not more than 10 years. The expiration date of the exchange-of-use agreement may coincide with the expiration date of any grazing permit or lease issued on the allotment in which the land offered in exchange is located. If the land offered in exchange of use is leased, the expiration date of the exchange-of-use agreement shall coincide with the expiration date of this lease not to exceed 10 years. During the term of the exchange-of-use agreement, the Bureau of Land Management shall have management control of such private land for grazing purposes under the provisions of this part and may authorize grazing use as deemed appropriate.

§ 4130.4-2 Nonrenewable grazing permits or leases.

Nonrenewable grazing permits of leases may be issued to qualified applicants when forage is temporarily available, provided this use does not interfere with existing livestock operations on the public lands and it is consistent with land use plans. This use shall be authorized on an annual basis only.

§ 4130.4-3 Crossing permits.

Any applicant showing the necessity for crossing the public land or other land under Bureau of Land Management control, or both, with livestock

for proper and lawful purposes may be issued a crossing permit upon such terms and conditions deemed necessary by the authorized officer to achieve the objectives of this part.

§ 4130.4-4 Special grazing permits or leases.

Special grazing permits or leases authorizing grazing use by privately owned or controlled indigenous animals may be issued at the discretion of the authorized officer. This use shall be consistent with land use plans. These permits or leases shall be issued for a term deemed appropriate by the authorized officer not to exceed 10 years.

§ 4130.5 Fees.

§ 4130.5-1 Payment of fees.

(a) [Reserved]

(b) The fees for each grazing fee year shall be published annually in the FEDERAL REGISTER.

(c) Fees shall be charged for livestock grazing upon or crossing the public lands and other lands under Bureau of Land Management control at a specified rate per animal unit month. For billing purposes, one cow, one horse, one burro, five sheep, or five goats shall be considered as one animal unit. A minimum annual fee of $10 shall be charged for livestock grazing upon these lands. A minimum fee of $10 shall be charged for each crossing permit issued on these lands. No fee shall be charged for livestock grazing authorized under free-use grazing permits or exchange-of-use grazing agreements. No fee shall be charged when authorizing total nonuse.

(d) The full fee shall be charged for each paying animal unit, which is defined as each animal six (6) months of age or over at the time of entering public lands, for all weaned animals regardless of age, and for such animals as will become twelve (12) months of age during the authorized period of use. No charge will be made for animals under six (6) months of age at the time of entering public lands, that are the natural progeny of animals upon which fees are paid, provided they will not become twelve (12) months of age during the authorized period of use, or for progeny born during that period.

(e) Fees are due upon issuance of the billing notice and must be paid in full prior to grazing use except where an allotment management plan has been incorporated in a grazing permit or lease, in which case a billing notice based on actual use may be issued at the end of the grazing period or year or a billing notice based on the normal operation may be issued prior to the grazing period or year followed by an adjusted billing notice based on actual use after grazing use has been completed. If an actual use report is not submitted, the amount due will be based on grazing use at the upper limit of flexibility specified in the allotment management plan. The authorized officer shall cancel this actual use billing privilege for failure, or refusal, to submit a timely actual use report, however, this does not relieve the permittee or lessee of his responsibility for submitting an actual use report under § 4120.2-3(e).

(f) Fifty percent of the grazing fees collected for grazing livestock on public lands (other than ceded Indian lands) under the act shall be deposited in a separate account in the U.S. Treasury for the range improvement program (see § 4120.6).

§ 4130.5-2 Refunds.

(a) Grazing fees may be refunded at the discretion of the authorized officer where applications for change in grazing use and related refund are filed prior to the period of use for which the refund is requested.

(b) No refunds shall be made for failure to make grazing use, except during periods of range depletion due to drought, fire, or other natural causes, or in case of a general spread of disease among the livestock, that occurs during the term of a permit or lease. During these periods of range depletion the authorized officer may credit or refund fees in whole or in part, or fee payment may be postponed for as long as the emergency exists.

§ 4130.5-3 Service charge.

Except for actions initiated by the authorized officer, a service charge of $10 shall be made for each transfer of a grazing preference and for each replacement or supplemental billing notice issued under § 4130.6

§ 4130.6 Changes in grazing use.

(a) Applications for changes in grazing use should be filed with the authorized officer before the billing notices for the affected grazing use have been issued. Applications for changes in grazing use filed after the billing notices for the affected grazing use have been issued and which require the issuance of replacement or supplemental billing notices shall be subject to a service charge under § 4130.5-3.

(b) Changes in grazing use may be granted at the discretion of the authorized officer if the changes applied for are compatible with existing operations and are consistent with the objectives for the affected allotments.

4130.7 Pledge of permits or leases as security for loans.

Grazing permits or leases that have been pledged as security for loans from lending agencies shall be renewed by the authorized officer under the provisions of these regulations for a period of not to exceed 10 years if the loan is for the purpose of furthering the permittee's or lessee's livestock operation, *Provided,* That the permittee or lessee has complied with the rules and regulations of this part and that such renewal will be in accordance with other applicable laws and regulations. While grazing permits or leases may be pledged as security for loans from lending agencies, this does not exempt these permits or leases from the provisions of these regulations.

Subpart 4140—Prohibited Acts

§ 4140.1 Acts prohibited on public lands.

The following acts are prohibited on public lands and other lands under Bureau of Land Management control:

(a) Persons performing the following prohibited acts may be subject to civil penalties under § 4170.1:

(1) Violating special terms and conditions incorporated in permits or leases;

(2) Failing to make substantial grazing use as authorized for 2 consecutive fee years;

(3) Placing supplemental feed on these lands without authorization;

(4) Failing to comply with the terms, conditions, and stipulations of range improvement cooperative agreements or range improvement permits;

(5) Refusing to install, maintain, modify, or remove range improvements when so directed by the authorized officer.

(b) Persons performing the following prohibited acts may be subject to civil and criminal penalties under §§ 4170.1 and 4170.2:

(1) Allowing livestock on or driving livestock across these lands without a permit or lease or in violation of the terms and conditions of a permit or lease, either by exceeding the number of livestock authorized, or by allowing livestock to be on these lands in an area or at a time different from that designated;

(2) Installing, using, maintaining, modifying, and/or removing range improvements without authorization;

(3) Cutting, burning, spraying, destroying, or removing vegetation without authorization;

(4) Damaging or removing U.S. property without authorization;

(5) Molesting livestock authorized to graze on these lands;

(6) Littering;

(7) Violating any provision of part 4700 of subchapter concerning the protection and management of wild free-roaming horses and burros;

(8) Violating any Federal or State laws or regulations concerning conservation or protection of natural and cultural resources or the environment including, but not limited to, those re-

lating to air and water quality, protection of fish and wildlife, plants, and the use of chemical toxicants;

(9) Interfering with lawful uses or users;

(10) Knowingly or willfully making a false statement or representation in base property certifications, grazing applications, range improvement permit applications, cooperative agreements, and/or amendments thereto;

(11) Violating State livestock requirements relating to branding of livestock; breed, grade, and number of bulls; and health and sanitation requirements;

(12) Allowing privately owned or controled indigenous animals on or driving them across these lands without a permit or lease or in violation of the terms and conditions of a permit or lease, either by exceeding the number of animals authorized, or by allowing indigenous animals to be on these lands in an area or at a time different from that designated.

Subpart 4150—Unauthorized Grazing Use

§ 4150.1 Violations.

Violation of § 4140.1(b)(1) constitutes unauthorized grazing use. Violators shall be liable in damages to the United States for the forage consumed by their livestock, for injury to Federal property caused by their unauthorized grazing use, and for expenses incurred in impoundment and disposal, and may be subject to civil penalties or criminal sanction for such unlawful acts. Violation of § 4140.1(b)(12) also constitutes unauthorized grazing use and violators are subject to the provisions of this subpart as deemed appropriate.

§ 4150.2 Notice and order to remove.

(a) Whenever it appears that a violation exists and the owner of the unauthorized livestock is known, written notice shall be served upon the alleged violator or his agent, or both, by certified mail or personal delivery and a copy of the notice shall be sent to any lien holder of record. The notice shall set forth the act or omission constituting the violation and refer to the specific terms, conditions, and provisions of these regulations alleged to have been violated. It shall also order the alleged violator to remove the livestock within a specified time. The notice shall allow a specified time from receipt of notice for the alleged violator to show that there has been no violation or to make settlement under § 4150.3. If the alleged violator fails to comply with the notice, the authorized officer may proceed to impound the livestock under § 4150.5.

(b) When neither the owner of the unauthorized livestock nor his agent is known, the authorized officer may proceed to impound the livestock under § 4150.5.

(c) A notice alleging unauthorized horse or burro use in areas with wild free-roaming horses and burros shall specify that the unauthorized horses or burros can be claimed and gathered only in accordance with the procedures of part 4700 of this subchapter.

§ 4150.3 Settlement.

The authorized officer shall analyze the facts and circumstances of the case and shall determine if the violation is nonwillful or willful and, if it is willful, whether it is a repeated violation. When violations are determined to be nonwillful, settlement shall be made under paragraphs (a)(1) and (a)(3) of this section. When violations are determined to be willful, or willfully repeated, settlement shall be made under paragraphs (a) (2), (3), and (4) of this section and the authorized officer shall take action under § 4170.1-1.

(a) The amount due the United States in settlement for unauthorized grazing use shall be determined by the authorized officer as follows:

(1) "Nonwillful violations." The value of forage consumed as determined by the average monthly rate for pasturing livestock on privately owned land (excluding irrigated land) for the 11 Western States as published annually by the Department of Agriculture.

(2) "Willful and repeated willful violations." Twice the value of the forage consumed as determined in paragraph (a)(1) of this section.

(3) The full value for all damages to the public lands and other property of the United States.

(4) All expenses incurred by the United States including those incurred in gathering, impounding, caring for, and disposing of livestock in cases which necessitate impoundment under § 4150.5.

(b) Payment made under this section does not relieve the alleged violator of any criminal liability under Federal or State law.

(c) No permit or lease shall be issued or renewed until any amount found to be due in the United States under this section has been paid.

§ 4150.4 Demand for payment.

Where the livestock have been removed, but satisfactory settlement has not been made within the time allowed under § 4150.2, a certified letter demanding payment will be sent or personally delivered to the owner or his agent, or both, and a copy of the letter shall be sent to any lienholder of record. This letter shall allow not more than 15 days from date of receipt to settle the obligation.

§ 4150.5 Impoundment and disposal.

Unauthorized livestock remaining on the public lands or other lands under Bureau of Land Management control, or both, after the date set forth in the notice and order to remove sent under § 4150.2 may be impounded and disposed of by the authorized officer as provided herein.

§ 4150.5-1 Notice of intent to impound.

(a) A written notice of intent to impound shall be sent by certified mail or personally delivered to the owner or his agent, or both, and a copy of the notice shall be sent to any lienholder of record. The written notice shall indicate that unauthorized livestock on the specified public lands or other lands under Bureau of Land Management control, or both, may be impounded any time after 5 days from delivery of the notice.

(b) Where the owner and his agent are unknown, or where both a known owner and his agent refuses to accept delivery, a notice of intent to impound shall be published in a local newspaper and posted at the county courthouse and a post office near the public land involved. The notice shall indicate that unauthorized livestock on the specified public lands or other lands under Bureau of Land Management control, or both, may be impounded any time after 5 days from publishing and posting the notice.

§ 4150.5-2 Impoundment.

(a) Any time after 5 days from delivery of the notice under § 4150.5-1(a) or any time after 5 days from publishing and posting the notice under § 4150.5-1(b), the unauthorized livestock may be impounded.

(b) Unauthorized livestock my be impounded without further notice any time within the 12-month period following the effective date of a notice given under § 4150.5-1 (a) or (b).

§ 4150.5-3 Notice of public sale.

Following the impoundment of livestock under this subpart the livestock may be disposed of by the authorized officer under these regulations or, if a suitable agreement is in effect, they may be turned over to the State for disposal. If the authorized officer disposes of the livestock, he shall publish a notice of sale in a local newspaper and post this notice at the county courthouse and at a post office near the land involved. The notice shall describe the livestock and specify the date, time, and place of sale. The sale date shall be at least 5 days after the publication and posting of the notice. Any known owners or agents, or both, and lienholders of record shall be notified in writing by certified mail or by personal delivery of the sale and the procedure by which the impounded livestock may be redeemed prior to the sale.

§ 4150.5-4 Redemption.

Any owner or his agent, or both, or lien-holder of record of the impounded

livestock may redeem them under these regulations or, if a suitable agreement is in effect, in accordance with State law, prior to the time of sale upon settlement with the United States under § 4150.3 or adequate showing that there has been no violation.

§ 4150.5-5 Sale.

If the livestock are not redeemed on or before the date and time fixed for their sale, they shall be offered at public sale to the highest bidder by the authorized officer under these regulations or, if a suitable agreement is in effect, by the State. If a satisfactory bid is not received, the livestock may be reoffered for sale, condemned and destroyed, or otherwise disposed of under these regulations or, if a suitable agreement is in effect, in accordance with State law. When livestock are sold by the authorized officer under these regulations, he shall furnish the purchaser a bill of sale. If sold by the State, the Bureau of Land Management shall be reimbursed for the amount due under § 4150.3 up to the amount received for sale of the livestock.

Subpart 4160—Administrative Remedies

§ 4160.1 Proposed decisions.

§ 4160.1-1 Proposed decisions on permits or leases.

The authorized officer shall serve a proposed decision on any applicant, permittee, or lessee, or his agent, or both, who is adversely affected by his proposed action on applications for permits (including range improvement permits) or leases or by his proposed action related to terms and conditions of permits (including range improvement permits) or leases, by certified mail or personal delivery, and shall notify any lienholder of record of the proposed decision. The proposed decision shall state the reasons for the action, including reference to the pertinent terms, conditions, and/or provisions of these regulations, and shall provide for a period of 15 days after receipt for the filing of a protest.

§ 4160.1-2 Proposed decisions on alleged violations.

If the authorized officer determines that a permittee or lessee appears to have violated any provision of this part he shall serve a proposed decision on the permittee or lessee, or his agent, or both, by certified mail or personal delivery, and shall notify any lienholder of record of the proposed decision. The proposed decision shall state the alleged violation and refer to the specific terms, conditions, and/or provisions of these regulations alleged to have been violated and the reasons for the proposed decision. As applicable, the proposed decision shall state the amount due under §§ 4130.5-1 or 4150.3 and the action to be taken under § 4170.1. The proposed decision shall provide for a period of 15 days after receipt for the filing of a protest.

§ 4160.2 Protests.

Any applicant, permittee, lessee, or any other person adversely affected by a proposed decision of the authorized officer may protest the proposed decision in person or in writing to the authorized officer within 15 days after receipt of the proposed decision.

§ 4160.3 Final decisions.

(a) In the absence of a protest, the proposed decision shall become the final decision of the authorized officer without further notice.

(b) Upon the timely filing of a protest, the authorized officer shall reconsider his proposed decision in light of the protestant's statement of reasons for protest and in light of other information pertinent to the case. At the conclusion of his review of the protest, the authorized officer shall serve his final decision on the protestant or his agent, or both, and on any other known interested individual, and shall notify any lienholder of record of the final decision.

(c) The final decision shall provide for a period of 30 days after receipt for filing of an appeal. An appeal shall suspend the effects of the final decision from which it is taken pending final action on the appeal. Where the appeal is concerned with the grazing use to be granted under the current application, an applicant who was granted grazing use in the preceding year may continue to make that use pending final action on the appeal. However, the authorized officer may provide in the final decision that it shall be in full force and effect pending decision on appeal therefrom. Final decisions shall be in full force and effect only if required for the orderly administration of the range or for the protection of other resource values. See § 4.477 of this title.

§ 4160.4 Appeals.

Any applicant, permittee, lessee, or any other person whose interest is adversely affected by a final decision of the authorized officer may appeal the decision for the purpose of a hearing before an administrative law judge under § 4.470 of this title by filing his notice of appeal in the office of the authorized officer within 30 days after the receipt of the decision.

§ 4160.5 Show cause.

Whenever it appears to the authorized officer that disciplinary action is advisable because a permittee or lessee has willfully or repeatedly violated provisions of this part, the authorized officer shall serve a show cause notice on the permittee or lessee, or his agent, or both, by certified mail or personal delivery and shall notify any lienholder of record. The show cause notice shall state the alleged violation and refer to the specific terms, conditions, and/or provisions of these regulations alleged to have been violated. As applicable, the notice shall state the amount due under §§ 4130.5-1 or 4150.3. The show cause notice shall cite the permittee or lessee to appear before an administrative law judge at a designated time and place, in accordance with § 4.470 of this title, to show cause why his grazing permit or grazing lease should not be suspended in whole or in part or why his grazing permit or grazing lease and grazing preference should not be canceled in whole or in part under § 4170.11.

Subpart 4170—Penalties

§ 4170.1 Civil penalties.

§ 4170.1-1 Penalty for violations.

The authorized officer may suspend the grazing use authorized under a grazing permit or grazing lease, in whole or in part, or may cancel a grazing permit, or grazing lease and grazing preference, or a free use grazing permit or other grazing authorization, in whole or in part, under subpart 4160 for violation by a permittee or lessee of any of the provisions of this part. However, the authorized officer shall suspend the grazing use authorized under a grazing permit or grazing lease, in whole or in part, or shall cancel a grazing permit or grazing lease and grazing preference, in whole or in part, under subpart 4160 for repeated willful violation by a permittee or lessee of § 4140.1(b)(1). Whenever a nonpermittee or nonlessee violates § 4140.1(b)(1) and has not made satisfactory settlement under § 4150.3, the authorized officer shall refer the matter to proper authorities for appropriate legal action by the United States against the violator.

§ 4170.1-2 Failure to use.

Failing to make substantial grazing use as authorized for 2 consecutive fee years may result in the cancellation of the grazing preference only to the extent of failure to use (see § 4140.1(a)(2)).

§ 4170.1-3 Federal or State laws or regulations.

Violation of § 4140.1(b)(8) may result in a penalty under § 4170.1-1 where:

(a) Public land administered by the Bureau of Land Management is involved or affected;

(b) Such violation is related to grazing use authorized by permit or lease; and

(c) The permittee or lessee has been convicted of or otherwise found to be in violation of any of these laws or regulations by a court.

§ 4170.2 Penal provisions.

§ 4170.2-1 Penal provisions under the Taylor Grazing Act.

Under section 2 of the act any person who willfully violates the provisions of § 4140.1(b) or of approved special rules and regulations is punishable by a fine of not more than $500.

§ 4170.2-2 Penal provisions under the Federal Land Policy and Management Act.

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), any person who knowingly and willfully violates the provisions of § 4140.1(b) or of approved special rules and regulations may be brought before a designated U.S. magistrate and is punishable by a fine of not more than $1,000 or imprisonment for no more than 12 months, or both.

4. Part 4700 is amended by changing references in §§ 4720.3, 4730.3, and 4730.4. These sections are revised to read as follows:

§ 4720.3 Trespass animals.

Unauthorized horses or burros which have been claimed and have been determined to be privately owned in accordance with the provisions of this section will be considered to have been in trespass and may not be released until a proper trespass charge has been determined by the authorized officer in accordance with the provisions of subpart 4150 of this subchapter.

§ 4730.3 Habitat reservation and allocation.

The biological requirements of wild free-roaming horses and burros will be determined based upon appropriate studies or other available information. The needs for soil and watershed protection, domestic livestock, maintenance of environment quality, wildlife, and other factors will be considered along with wild free-roaming horse and burro requirements. After determining the optimum number of such horses and burros to be maintained on an area, the authorized officer shall reserve adequate forage and safety other biological requirements of such horses and burros and, when necessary, adjust or exclude domestic livestock use accordingly. See §§ 4110.2-2 and 4110.3-2 of this subchapter.

§ 4730.4 Closure to livestock grazing.

The authorized officer may close public lands to use by all or a particular kind of domestic livestock where it is necessary to allocate all available forage to, or to satisfy other biological requirements of wild free-roaming horses or burros. Such closures may be made only after appropriate public notice and in accordance with the procedures for reduction or cancellation of grazing privileges provided for under provisions in this subchapter. See §§ 4110.2-2 and 4110.3-2 of this subchapter.

5. Part 9230 is amended by deleting §§ 9239.3, 9239.3-1, and 9239.3-2 and redesignating "§ 9239.3-3 Alaska." as "§ 9239.3 Grazing, Alaska." as follows:

§§ 9239.3—9239.3-2 [Deleted]

§ 9239.3 Grazing, Alaska. [Redesignated from § 9239.3-3]

GUY R. MARTIN,
Assistant Secretary of the Interior.

JUNE 28, 1978.

[FR Doc. 78-18421 Filed 7-3-78; 8:45 am]

☆U.S. Government Printing Office: 1978-778-906/7 Region 8

Title 43—Public Lands; Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2434]

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

PART 3100—OIL AND GAS LEASING

Subpart 3101—Lands Subject To Leasing

MILITARY LANDS

Section 3101.2-1(f), Subpart 3101, Part 3100, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

Subpart 3101—Lands Subject to Leasing

1. Section 3101.2-1(f) of Subpart 3101 is amended to read as follows:

§ 3101.2-1 Lands to which the Act does not apply.

* * * * *

(f) Within naval petroleum and oil shale reserves and within the National Petroleum Reserve in Alaska, or

GUY R. MARTIN,
Land and Water Resources,
Assistant Secretary of the Interior.

AUGUST 11, 1978.

[FR Doc. 78-23440 Filed 8-21-78; 8:45 am]

Published in 43 F.R. 37202, August 22, 1978 - Effective September 21, 1978.

Circular Distribution List

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2435]

RECODIFICATION OF RECREATION REGULATIONS

This rulemaking is primarily a recodification of existing regulations. Some reorganization and clarification of the provisions are made as part of the recodification process. However, no substantive changes are made in the regulations.

Accordingly, under the authority of section 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1740), Chapter II of Title 43 of the Code of Federal Regulations is amended by removing all recreation regulations from the 6000 series in subchapter F and placing them in the 8000 series in subchapter H as set forth below.

1. All regulatory provisions except subpart 6224 are deleted from subchapter F. Subchapter F is amended to read as follows:

SUBCHAPTER F—WILDLIFE MANAGEMENT (6000)

PART 6000—[Deleted]

PART 6010—[Deleted]

PART 6200—[Deleted]

PART 6220—PROTECTION AND PRESERVATION OF NATURAL VALUES

Subpart 6221—[Deleted]

Subpart 6222—[Deleted]

Subpart 6223—[Deleted]

Subpart 6224—Viable Coral Communities

* * * * *

Subpart 6225—[Deleted]

PART 6250—[Deleted]

PART 6260—[Deleted]

PART 6270—[Deleted]

PART 6290—[Deleted]

2. The recreation management regulations are reorganized and recodified as follows:

SUBCHAPTER H—RECREATION PROGRAMS

Group 8000—Recreation Programs

PART 8000—RECREATION PROGRAMS

Subpart 8000—General

Sec.
8000.0-1 Purpose.
8000.0-2 Objectives.
8000.0-3 Authority.
8000.0-4 Responsibility.
8000.0-6 Policy.

Group 8100—Cultural Resource Management [Reserved]

Group 8200—Natural History Resource Management

PART 8200—PROCEDURES

Subpart 8200—General

Sec.
8200.0-1 Purpose.

Subpart 8223—Research Natural Areas

8223.0-1 Purpose.
8223.0-5 Definitions.
8223.0-6 Policy.
8223.1 Use of research natural areas.

Group 8300—Recreation Management

PART 8300—PROCEDURES

Subpart 8300—General

Sec.
8300.0-1 Purpose.
8300.0-2 Objective.
8300.0-6 Policy.

PART 8340—OFF-ROAD VEHICLES

Subpart 8340—General

Sec.
8340 Right-of-way.

PART 8350—MANAGEMENT AREAS

Subpart 8351—Designated National Areas

Sec.
8351.0-1 Purpose.
8351.0-2 Objective.
8351.0-3 Authority.
8351.0-6 Policy.
8351.1 Trails [Reserved]
8351.2 Rivers [Reserved]

Subpart 8352—Established Areas

8352.0-1 Purpose.
8352.0-2 Objective.
8352.0-5 Definitions.
8352.0-6 Policy.
8352.1 Use of outstanding natural areas.
8352.2 Use of recreation lands. [Reserved]
8352.3 Use of scenic areas. [Reserved]
8352.4 Use of primitive areas.

PART 8360—OPERATIONS

Subpart 8361—Services

Sec.
8361.0-6 Policy.

Subpart 8363—Rules of Conduct

8363.0-1 Purpose.
8363.0-2 Objective.
8363.1 Developed sites and areas.
8363.1-1 Sanitation.
8363.1-2 Audio devices.
8363.1-3 Occupancy and use.
8363.1-4 Vehicles.
8363.1-5 Public health, safety, and comfort.
8363.1-6 Public property and resources.
8363.2 Undeveloped sites and areas.

Published in 43 F.R. 40734, September 12, 1978 - Effective October 12, 1978

Circular Distribution List

8363.2-1 Permitted activities.
8363.2-2 Prohibited activities.
8363.3 Supplemental rules.
8363.4 State and local laws.
8363.5 Criminal penalties.

Subpart 8364—Closures

8364.1 Closure of lands.
8364.1-1 Closure of access.
8364.2 Criminal penalties.

PART 8370—USE AUTHORIZATIONS

Subpart 8371—Recreation use permits, developed sites. [Reserved]

Subpart 8372—Special recreation permits, other than on developed recreation sites

Sec.
8372.0-1 Purpose.
8372.0-2 Objective.
8372.0-3 Authority.
8372.0-5 Definitions.
8372.0-7 Enforcement.
8372.1 Permits required.
8372.1-1 Public lands, general.
8372.1-2 Special areas.
8372.2 Applications.
8372.3 Issuance of permits.
8372.4 Fees.
8372.5 Terms.

PART 8400—VISUAL RESOURCE MANAGEMENT [RESERVED]

PART 8500—WILDERNESS MANAGEMENT [RESERVED]

PART 8600—ENVIRONMENTAL EDUCATION AND PROTECTION [RESERVED]

Group 8000—Recreation Programs

PART 8000—RECREATION PROGRAMS

Subpart 8000—General

Sec.
8000.0-1 Purpose.
8000.0-2 Objective.
8000.0-3 Authority.
8000.0-4 Responsibility.
8000.0-6 Policy.

AUTHORITY: 16 U.S.C. 460(1-6a), 16 U.S.C. 670 (g-n), 16 U.S.C. 1241 et seq., 16 U.S.C. 1271 et seq., 43 U.S.C. 1181(a) and 1181(e), 43 U.S.C. 1201, 43 U.S.C. 1334, 43 U.S.C. 1701 et seq., and E.O. 11644, as amended.

PART 8000—RECREATION PROGRAMS

Subpart 8000—General

§ 8000.0-1 Purpose.

The regulations in this Subchapter H set forth procedures for the administration of recreation programs on public lands. The programs are cultural resource management, natural history resource management, recreation management, visual resource management, wilderness management, and environmental education and protection.

§ 8000.0-2 Objective.

The objective is to manage the public lands and the recreation use of those lands to protect the health and safety of recreationists who use the public lands, to protect natural resource values on the public lands, and promote public use and enjoyment of the public lands.

§ 8000.0-3 Authority.

These regulations are issued under authorities provided in 16 U.S.C. 460(1-6a), 16 U.S.C. 670 (g-n), 16 U.S.C. 1241 et seq., 16 U.S.C. 1271 et seq., 43 U.S.C. 1181(a) and 1181(e), 43 U.S.C. 1201, 43 U.S.C. 1334, 43 U.S.C. 1701 et seq., and Executive Order 11644, as amended.

§ 8000.0-4 Responsibility.

The authority of the Secretary of the Interior to develop and manage the public lands for recreational purposes, to authorize recreation use, and specify terms and conditions of such use on public lands, and to otherwise enforce the regulations in this Subchapter H has been delegated to the authorized officers of the Bureau of Land Management. Any exceptions are specifically provided for in regulations.

§ 8000.0-6 Policy.

(a) The recreation programs involving public lands shall be developed and managed in accordance with multiple-use management principles unless otherwise specified by law.

(b) State and local government and private agencies shall be encouraged to develop public recreation facilities when consistent with the long range management plans and programs of the Bureau of Land Management.

(c) Priority shall be given to these recreation programs:

(1) Recreation development and improvement as follows: (i) Undeveloped sites now under heavy, uncontrolled use that threatens public health and safety or is damaging to natural, cultural, and historical resources; (ii) Areas where public recreation demands exceed the opprtunities and facilities now available; and (iii) Areas that are near urban areas or bodies of water and unique scenic attractions that adjoin heavily traveled highway routes.

(2) Preservation and protection of natural and cultural resources, including but not limited to scientific, scenic, historic, and archeological values, and primitive environments.

(d) Reasonable fees may be established and collected by the authorized officer in accordance with part 18 of this title 43.

Group 8100—Cultural Resource Management [Reserved]

Group 8200—Natural History Resource Management

PART 8200—PROCEDURES

Subpart 8200—General

Sec.
8200.0-1 Purpose.

Subpart 8223—Research Natural Areas

8223.0-1 Purpose.
8223.0-5 Definitions.
8223.0-6 Policy.
8223.1 Use of research natural areas.

AUTHORITY: 43 U.S.C. 1181 (a) and (e), 43 U.S.C. 1201, 43 U.S.C. 1701 et seq.

Subpart 8200—General

§ 8200.0-1 Purpose.

This part 8200 provides procedures and practices for the management and use of public lands that have ecological or other natural history values of scientific interest.

Subpart 8223—Research Natural Areas

§ 8223.0-1 Purpose.

The purpose of this part is to provide procedures for the management and protection of public lands having natural characteristics that are unusual or that are of scientific or other special interest.

§ 8223.0-5 Definitions.

(a) "Research natural area" means an area that is established and maintained for the primary purpose of research and education because the land has one or more of the following characteristics: (1) A typical representation of a common plant or animal association; (2) an unusual plant or animal association; (3) a threatened or endangered plant or animal species; (4) a typical representation of common geologic, soil, or water features; or (5) outstanding or unusual geologic, soil, or water features.

§ 8223.0-6 Policy.

Areas established as research natural areas shall be of sufficient number and size to adequately provide for scientific study, research, and demonstration purposes.

§ 8223.1 Use of research natural areas.

(a) No person shall use, occupy, construct, or maintain facilities in a research natural area except as permitted by law, other Federal regulations,

or authorized under provisions of this subpart 8223.

(b) No person shall use, occupy, construct, or maintain facilities in a manner inconsistent with the purpose of the research natural area.

(c) Scientists and educators shall use the area in a manner that is nondestructive and consistent with the purpose of the research natural area.

Group 8300—Recreation Management

PART 8300—PROCEDURES

Subpart 8300—General

Sec.
8300.0-1 Purpose.
8300.0-2 Objective.
8300.0-6 Policy.

AUTHORITY: 16 U.S.C. 460(1-6a), 16 U.S.C. 670(g-n), 16 U.S.C. 1241, 16 U.S.C. 1271, 43 U.S.C. 1701 et seq.

Subpart 8300—General

§ 8300.0-1 Purpose.

(a) This group sets forth procedures and practices for the management and use of public lands for specific kinds of public recreation activities, resource conditions, outdoor recreation occupancy, and resource development.

(b) Guidelines are provided regarding access to public lands and limitations on travel across public lands.

§ 8300.0-2 Objective.

The objectives are to provide access to the public lands for those who wish to use them, to minimize conflicts among users, and to prevent damage to natural resources by recreation activities.

§ 8300.0-6 Policy.

(a) As appropriate for management and public identification purposes, lands having significant natural values may be designated under provisions of part 2070 of this chapter and segregated under applicable authorities.

(b) In cooperation with State and local government and private landholders, the Bureau of Land Management shall endeavor to provide for public access to public lands with outdoor recreation values.

PART 8340—OFF-ROAD VEHICLES

Subpart 8340—General

§ 8340 Right-of-way.

Drivers of motor vehicles shall yield the right-of-way to pedestrians, saddle horses, pack trains, and horse-drawn vehicles.

(E.O. 11644.)

PART 8350—MANAGEMENT AREAS

Subpart 8351—Designated National Areas

Sec.
8351.0-1 Purpose.
8351.0-2 Objective.
8351.0-3 Authority.
8351.0-6 Policy.
8351.1 Trails [Reserved].
8351.2 Rivers [Reserved]

AUTHORITY: 16 U.S.C. 1241, 16 U.S.C. 1271, 43 U.S.C. 1701 et seq.

Subpart 8351—Designated National Areas

§ 8351.0-1 Purpose.

To provide procedures for the management of lands administered under provisions of the Wild and Scenic Rivers Act and the National Trails System Act.

§ 8351.0-2 Objective.

To assure that all public lands administered under provisions of the Wild and Scenic Rivers Act and the National Trails System Act are managed in a manner consistent with the purposes of these Acts.

§ 8351.0-3 Authority.

The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).

The National Trails System Act of 1968 (16 U.S.C. 1241 et seq.).

§ 8351.0-6 Policy.

(a) Hiking, horse riding, and motor trails shall be located, constructed, and maintained where they are found to be feasible and would improve recreation opportunity and quality. Established trails shall be marked or signed and made known to the public by other means.

(b) Certain rivers and sections of rivers that are flowing free of the influence of dams or other major manmade alterations and that possess outstanding scenic, recreational, geological, biological, cultural, or historical features shall be preserved as free flowing streams. The immediate river area shall be managed to protect the natural, cultural, or historical features that make the river or river segment outstanding.

§§ 8351.1 and 8351.2 [Reserved]

Subpart 8352—Established Areas

§ 8352.0-1 Purpose.

To establish procedures for the management of recreation use to protect (a) lands that have unusual natural characteristics and (b) lands that are primitive in character.

§ 8352.0-2 Objectives.

(a) *Outstanding natural areas.* The objective is to manage for the maximum amount of recreation use possible on outstanding natural areas without damage to the natural features that make the areas outstanding.

(b) *Primitive areas.* The objective is to manage for the maximum amount of recreation use possible on primitive areas with a minimum of interference with natural ecological processes and to preserve the primitive recreation values of solitude, inspiration, and mental and physical challenge.

§ 8352.0-5 Definitions.

As used in this part the term:

(a) "Outstanding natural area" means an area of unusual natural characteristics where management of recreation activities is necessary to preserve those characteristics.

(b) "Primitive area" means an area that is composed of natural, undeveloped lands that are essentially unaffected by civilization and located where the natural environment can be preserved by management of recreation activities and exclusion of additional roads and commercial developments.

§ 8352.0-6 Policy.

(a) *Outstanding natural areas.* Outstanding natural areas shall be large enough to provide for protection of the outstanding natural features through management of recreation activities in the area.

(b) *Scenic areas.* Scenic areas established along highways, roads, trails, streams, or larger water bodies shall be managed to protect and enhance the scenic qualities that led to the establishment of the area.

(c) *Primitive areas.* Public use of primitive areas for recreation purposes shall be encouraged to the extent possible consistent with the objective of maintaining the primitive environment.

§ 8352.1 Use of outstanding natural areas.

(a) Facilities may be used, occupied, constructed, or maintained in an outstanding natural area only as permitted by law, other Federal regulations, or authorized under this subpart 8352.

(b) No person shall use, occupy, construct, or maintain authorized facilities in a manner that unnecessarily detracts from the quality of the outstanding natural features of the area.

§ 8352.2 Use of recreation lands. [Reserved]

§ 8352.3 Use of scenic areas. [Reserved]

§ 8352.4 Use of primitive areas.

(a) With the exception of essential search and rescue, fire control, or other emergency or administrative operations, no person shall travel in primitive areas except by nonmechanized means. With the exception noted,

this provision prohibits the landing of aircraft in a primitive area.

(b) No person shall construct facilities in or on a primitive area except in connection with authorized nonrecreation uses of the lands and as necessary to the protection and administration of the area.

(c) No person shall conduct nonrecreational authorized activities except under conditions specified by the authorized officer to preserve the primitive characteristics of the area.

Subpart 8361—Services

§ 8361.0-6 Policy.

To the extent practicable within budget and personnel constraints, signs shall be posted, ownership maps published, and other available means used to inform the public of recreation areas and opportunities.

Subpart 8362 [Reserved]

Subpart 8363—Rules of Conduct

Sec.
8363.0-1 Purpose.
8363.0-2 Objective.
8363.1 Developed sites and areas.
8363.1-1 Sanitation.
8363.1-2 Audio devices.
8363.1-3 Occupancy and use.
8363.1-4 Vehicles.
8363.1-5 Public health, safety, and comfort.
8363.1-6 Public property and resources.
8363.2 Undeveloped sites and areas.
8363.2-1 Permitted activities.
8363.2-2 Prohibited activities.
8363.3 Supplemental rules.
8363.4 State and local laws.
8363.5 Criminal penalties.

AUTHORITY: 43 U.S.C. 1181(a-e), 43 U.S.C. 1201, 43 U.S.C. 1701 et seq.

Subpart 8362 [Reserved]

Subpart 8363—Rules of Conduct.

§ 8363.0-1 Purpose.

The purpose of this subpart is to set forth rules of conduct that provide for the comfort and well-being of the public in its use of outdoor recreation areas, sites, and facilities on public lands.

§ 8363.0-2 Objective.

The objective of this subpart is to insure that outdoor recreation areas, sites, and facilities on public lands are usable by the maximum number of people with a minimum amount of conflict among users and a minimum of damage to public lands and resources.

§ 8363.1 Developed sites and areas.

Rules for the public use and occupancy of developed recreation sites and areas where recreation facilities have been constructed will be posted in conspicuous locations. Failure to comply with posted rules may result in denial of the use of developed sites and facilities, and further action as determined appropriate by the authorized officer.

§ 8363.1-1 Sanitation.

All persons shall:

(a) Dispose of all garbage, paper, cans, bottles, and other waste materials by burning in authorized fires, removal from the public lands, or by disposal in designated places.

(b) Drain or dump refuse or waste from any trailer or other vehicle only in places or receptacles provided for that purpose.

(c) Refrain from cleaning fish, game, or other food and from washing clothing or articles of household use at outdoor hydrants or at water faucets located in restrooms.

(d) Avoid polluting or contaminating water supplies or water used for human consumption.

(e) Deposit body wastes only in toilet receptacles provided for that purpose.

(f) Use any refuse container or disposal facility only for the purposes for which they are supplied.

(g) Refrain from dumping any household or commercial garbage or trash brought from private property.

§ 8363.1-2 Audio devices.

The following acts are prohibited in developed recreation sites:

(a) Operating or using any audio devices, including radio, television, and musical instruments, and other noise-producing devices, such as electrical generator plants and equipment driven by motors or engines, in a manner to annoy other persons.

(b) Operating or using public address systems, whether fixed, portable, or vehicle mounted unless approved by the authorized officer.

(c) Installing aerial or other special radiotelephone or television equipment unless approved by the authorized officer.

§ 8363.1-3 Occupancy and use.

The following rules apply to the occupancy and use of developed camping and picnicking facilities on the public lands. As a condition to such occupancy and use, the user shall:

(a) Pitch tents or park trailers or place other camping equipment only in places provided for such purposes.

(b) Camp within a campground no longer than the period of time established by the authorized officer.

(c) Attend camping equipment within prescribed time limits. Camping equipment which is unattended for more than posted limits, without permission of the authorized officer, is subject to disposition under State and local laws.

(d) Before departure, remove equipment and clean any rubbish from the place occupied for recreation purposes.

(e) Build fires only in stoves, grills, fireplaces, or fire rings provided for such purposes.

(f) Camp overnight only in places provided or posted for such purposes.

(g) Maintain reasonable quiet in campgrounds between evening and morning hours as posted.

(h) Enter or remain in campgrounds closed during established night periods only as an occupant, or to visit persons occupying the campgrounds for camping purposes.

(i) Not enter or use a site or a portion of a site closed to public use.

§ 8363.1-4 Vehicles.

The following rules apply to operation of motor vehicles in developed recreation sites in the interest of public safety and comfort. Motor vehicles and trailers shall not be:

(a) Driven or operated in excess of posted speeds.

(b) Driven or parked except on roads and places provided for this purpose.

(c) Driven or operated in willful disregard of the rights or safety of others, or without due caution and at a speed, or in a manner, so as to endanger, or be likely to endanger, any person or property.

(d) Driven or operated on trails within developed recreation sites, except for purposes of maintaining such sites and facilities.

(e) Driven or operated in developed recreation sites, for any purpose other than access to or from the site.

(f) Driven or operated in developed recreation sites closed to such entrance by the authorized officer.

(g) Driven or operated at any time without a muffler in working order, or in such a manner as to create excessive or unusual noise, or annoying smoke or dust, or using a muffler cutoff, bypass, or similar device.

(h) Unnecessarily accelerated when not moving, or when approaching or leaving a stopping place.

§ 8363.1-5 Public health, safety, and comfort.

The following rules are adopted to further the public health, safety and comfort in the use and occupancy of developed recreation sites and facilities. The user shall not:

(a) Discharge firearms, or firecrackers, rockets, or other fireworks in developed recreation sites.

(b) Be accompanied by a dog, cat, or other animal unless it is crated, caged, leashed, or otherwise under physical, restrictive control at all times.

(c) Bring animals, other than seeing eye dogs, to swimming areas.

(d) Bring saddle, pack, or draft animals into any developed recreation

site except where specifically permitted or authorized.

§ 8363.1-6 Public property and resources.

The following rules are adopted to protect public property and to conserve the resources in developed recreation sites for public use and enjoyment. The user shall not:

(a) Intentionally or wantonly destroy, deface, or remove any natural feature or plant.

(b) Intentionally or wantonly destroy, injure, deface, remove, or disturb in any manner any public building, sign, equipment, marker, or other structure or property.

§ 8363.2 Undeveloped sites and areas.

§ 8363.2-1 Permitted activities.

(a) *Collecting—hobby specimens.* Flowers, berries, nuts, seeds, cones, leaves, and similar renewable resources and nonrenewable resources such as rocks, mineral specimens, common invertebrate fossils, and gem stones may be collected in reasonable quantities for personal use, consumption, or hobby collecting. Limitations on this privilege are contained in § 8363.2-2 of this subpart.

(b) *Collecting—for sale or barter.* Gathering or collecting of renewable or nonrenewable resources for the purpose of sale or barter may be done only where specifically authorized by law.

(c) *Petrified wood.* For regulations pertaining to collection of petrified wood see Subpart 3612 of this chapter.

(d) *Vegetative and mineral materials.* For regulations pertaining to removal of vegetative and mineral materials, see Subparts 3610, 3611, and 5400 of these regulations.

§ 8363.2-2 Prohibited activities.

In the use of lands for public outdoor recreation purposes, no one shall:

(a) Intentionally or wantonly destroy, deface, injure, sign, remove, or disturb any public building, sign, equipment, marker, or other public property.

(b) Harvest or remove any vegetative or mineral resources or object of antiquity, historic, or scientific interest unless such removal is in accordance with part 3 of this title, regulations of this section, or is otherwise authorized by law.

(c) Appropriate, mutilate, deface, or destroy any natural feature, object of natural beauty, antiquity, or other public or private property.

(d) Dig, remove, or destroy any tree or shrub.

(e) Gather or collect renewable or nonrenewable resources for the purpose of sale or barter unless specifically permitted or authorized by law.

(f) Drive or operate motorized vehicles or otherwise conduct himself in a manner that may result in unnecessary frightening or chasing of people, domestic livestock and wildlife.

(g) Use motorized mechanical devices or explosives for digging, scrapping, or trenching for purposes of collecting.

§ 8363.3 Supplemental rules.

Additional rules to protect the public health and safety and protect resources may be established by the authorized officer, as necessary. They shall be posted in appropriate locations to notify the public of requirements for the occupancy and use of lands, outdoor recreation facilities, and roads and trails. The posted rules may provide for, but need not be limited to, protection of public health and safety, protection of lands from fires, prevention of soil erosion, and utilization and protection of outdoor recreation and other resource values of the public lands.

§ 8363.4 State and local laws.

Except as otherwise provided by law, State and local laws and ordinances shall apply. This refers, but is not limited, to laws and ordinances governing:

(a) Operation and use of motor vehicles, aircraft, and boats.

(b) Hunting and fishing.

(c) Use of firearms.

(d) Injury to persons or destruction of property.

(e) Air and water pollution.

(f) Littering.

(g) Sanitation.

(h) Use of fire.

§ 8363.5 Criminal penalties.

Any person who knowingly and willfully violates any rule of conduct described in § 8363.1-6 or § 8363.2-2 shall be fined not more than $1,000 or imprisoned not more than 12 months, or both.

Subpart 8364—Closures

Sec.
8364.1 Closure of lands.
8364.1-1 Closure of access.
8364.2 Criminal penalties.

Subpart 8364—Closures

§ 8364.1 Closure of lands.

In the management of lands to protect the public and assure proper resource utilization, conservation, and protection, public use and travel may be temporarily restricted. For instance, areas may be closed during periods of high fire danger or unsafe conditions, or where use will interfere with or delay mineral development, timber, and livestock operations, or other authorized use of the lands. Areas may also be closed temporarily to:

(a) Protect the public health and safety.

(b) Prevent excessive erosion.

(c) Prevent unnecessary destruction of plant life and wildlife habitat.

(d) Protect the natural environment.

(e) Preserve areas having cultural or historical value.

(f) Protect scientific studies or preserve scientific values.

§ 8364.1-1 Closure of access.

Roads, trails, and lands providing access to other public lands may be closed entirely or open only for specifically authorized travel in the interest of public health and safety or preservation and protection of public lands and resources.

§ 8364.2 Criminal penalties.

Any person who knowingly and willfully violates any closure order issued under § 8364.1 shall be fined not more than $1,000 or imprisoned not more than 12 months, or both.

PART 8370—USE AUTHORIZATIONS

Subpart 8371—Recreation use permits, developed sites. [Reserved]

Subpart 8372—Special recreation permits, other than on developed recreation sites.

Sec.
8372.0-1 Purpose.
8372.0-2 Objective.
8372.0-3 Authority.
8372.0-5 Definitions.
8372.0-7 Enforcement.
8372.1 Permits required.
8372.1-1 Public lands, general.
8372.1-2 Special areas.
8372.2 Applications.
8372.3 Issuance of permits.
8372.4 Fees.
8372.5 Terms.

AUTHORITY: 16 U.S.C. 460(1-6a), 16 U.S.C. 670(g-n), 16 U.S.C. 1271-1287, 6 U.S.C. 1241-1249, 43 U.S.C. 1181(a), 43 U.S.C. 1201, 43 U.S.C. 1701 et. seq.

Subpart 8371—Recreation use permits, developed sites [Reserved]

Subpart 8372—Rules for Visitor Uses, other than on Developed Recreation Sites

§ 8372.0-1 Purpose.

This subpart sets forth the procedures for authorizing certain recreational uses of lands and waters administered by the Bureau.

§ 8372.0-2 Objective.

To establish a permit and fee system for certain recreation uses of lands and waters administered by Bureau.

§ 8372.0-3 **Authority.**

The rules in this subpart are issued pursuant to: 43 U.S.C. 1201; 43 U.S.C. 1701 et seq.; 43 U.S.C. 1181a; 16 U.S.C. 460(1-6a); 16 U.S.C. 670g-n; 16 U.S.C. 1271-1287; 16 U.S.C. 1241-1249.

§ 8372.0-5 **Definitions.**

For the purposes of this subpart:

(a) "Commercial use" is recreational use of the public lands for business or financial gain. When any permittee, employee or agent of a permittee, operator, or participant makes or attempts to make a profit, salary, increase his business or financial standing, or supports, in any part, other programs or activities from amounts received from or for services rendered to customers or participants in the permitted activity, as a result of having the special recreation permit, the use will be considered commercial. Subsistence activities of Alaskan natives (as defined in the Alaska Native Claims Settlement Act) in Alaska are not considered recreational use. The collection by a permittee or his agent of any fee, charge, or other compensation which is not strictly a sharing of, or is in excess of, actual expenses incurred for the purposes of the activity or use shall make the activity or use commercial. Use by educational and therapeutic institutions is considered commercial when the above criteria are met. Profit making organizations are automatically classified as commercial, even if that part of their activity covered by the permit is not profit making. Nonprofit status of any group or organization under the Internal Revenue or Postal Laws or regulations does not in itself determine whether an event or activity arranged by such a group or organization is noncommercial. Any person, group, or organization seeking to qualify as noncommercial shall have the burden of establishing to the satisfaction of the authorized officer that no financial or business gain will be derived from the proposed use.

(b) "Actual costs or expenses" are costs or expenses necessarily incurred for the permitted activity or use. These terms include, but are not limited to, the actual costs of such items as expendable equipment and supplies. Actual costs or expenses will not include any salaries, profit, increase of capital worth, allowances, or subsidies of any other activities of the permittee or sponsor, the purchase or amortization of nonexpendable supplies or equipment, any allowance for undersubscribed events, or any monetary compensation for sponsors or participants.

(c) "Competitive use" is any formally organized or structured use, event, or activity on public land in which there are the elements of competition between two or more contestants, registration of participants, and/or a predetermined course or area is designated. The term also applies to one or more individuals contesting an established record such as speed or endurance.

(d) An "event" is a single, structured, organized, consolidated, or scheduled meeting or occurrence for the purpose of recreational use of the public lands. An event may be composed of several related activities.

(e) "Educational use" is use by an institution which has been recognized as educational by Federal, State, or local government bodies, or regional accrediting bodies. Such use must have learning as the major objective, and there must be a teacher-pupil relationship present. National, regional, State, or local accreditation will normally qualify a school as noncommercial, but such accreditation in and of itself does not assure noncommercial status.

(f) An "operator" is a group, association, individual, corporation, or organization which provides recreational services.

(g) A "special area" is an area established as a component of the National Trails System, the National Wild and Scenic Rivers System, the National Wilderness System, an area covered by joint agreement between the Bureau of Land Management and a State government as provided for in title II of the Sikes Act, or any other area where the authorized officer determines that the resources require special management and control measures for their protection.

(h) A "User day" is any calendar day, or portion thereof, for each individual accompanied or serviced by an operator or permittee on the public lands. Passenger day is synonymous with user day.

(i) An "off-road vehicle" is any motorized vehicle capable of, or designed for, travel on or immediately over land, water, or other natural terrain excluding: (1) Any nonamphibious registered motorboat; (2) any military, fire, emergency, or law enforcement vehicle while being used for emergency purposes; (3) any vehicle whose use is specifically authorized by the authorized officer or otherwise officially approved; (4) official use; or (5) any combat or combat support vehicle when used in times of national defense emergencies.

§ 8372.0-7 **Enforcement.**

Failure to pay any fee or failure to obtain a permit required by this subpart or operating with a suspended permit shall be punishable pursuant to the Federal Land Policy and Management Act of 1976, the Land and Water Conservation Fund Act, as amended, the Wild and Scenic Rivers Act, the National Trails Act, the Sikes Act, and other laws when applicable.

§ 8372.1 **Permits required.**

§ 8372.1-1 **Public lands, general.**

Special recreation permits are required for (a) commercial use, (b) competitive use, (c) off-road vehicle events involving 50 or more vehicles, and (d) special area use where the authorized officer determines the criteria of the Land and Water Conservation Fund Act, as amended, the Sikes Act, the Wild and Scenic Rivers Act, Federal Land Policy and Management Act, the Taylor Grazing Act, or National Trails Act require their issuance.

§ 8372.1-2 **Special areas.**

With the exception of use in special areas, special recreation permits are not required for recreational use by individuals, or individual immediate families. Notice will be given in the FEDERAL REGISTER and regional news media when special recreation permits are required for recreational use other than commercial, competitive, and off-road vehicle use in a special area. Access points in special areas will also be posted notifying the public of required permits for recreational use, other than commercial, competitive, and off-road vehicle use.

§ 8372.2 **Applications.**

(a) *Forms and maps.* Applications for special recreation permits shall be made to the authorized officer on forms approved by the Director, Bureau of Land Management. Applications shall include a map of sufficient scale and detail to allow identification of the proposed use area on the ground. The authorized officer may waive the requirement for maps where appropriate.

(b) *Supplemental information.* The authorized officer may require the applicant to submit supplemental information in sufficient detail to evaluate the impact of the proposed event upon the lands and environment, including measures the applicant would take to mitigate impacts on the lands and environment.

(c) *Filing.* (1) The application shall be filed in the office of the Bureau having jurisdiction over the lands to be used. The application shall be filed a minimum of 120 days in advance of intended use unless a shorter time is authorized by the authorized officer. Applications may be filed by mail or in person. (2) Within 30 days of the filing date or within 15 days of the desired use date, whichever is earliest, the authorized officer shall inform the applicant if the decision on issuing the permit will be delayed. (3) The authorized officer may establish a maximum

time by which applications will be accepted prior to date of proposed use.

§ 8372.3 Issuance of permits.

The approval of an application and subsequent issuance of a special recreation permit is discretionary with the authorized officer.

§ 8372.4 Fees.

(a) *Filing fees.* Applicants for special recreation permits for commercial or competitive uses shall include with their application a $10 nonrefundable filing fee.

(b) *Use fees.* (1) Commercial use—a minimum of $25 is required for use if not in excess of 100 user days. Payment for use in excess of 100 user days shall be in the amount of $25 each additional 100 user days or fraction thereof. (2) Competitive use—the fee is 5 percent of the gross receipts, $1 per participant per day or $10 whichever is greater. When use is both commercial and competitive, the competitive fee shall be charged. (3) Special area use—fees may be required for special area uses by other than commercial, competitive, and off-road vehicle users where the authorized officer determines that such charges are consistent with the Land and Water Conservation Fund Act. A minimum fee of $1 shall be charged for each permit for such use. (4) Off-road vehicle use—a minimum fee of $1 will be charged for the permit for each event. (5) The authorized officer may charge larger fees than these minimums consistent with charges made for similar uses by other organizations and governmental agencies in the region of use. (6) Any change in established fees will be made in accordance with section 304 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734).

(c) *Payment of use fees.* (1) Payment of fees will be required at the time a permit is issued. (2) Where the amount of intended use cannot be precisely determined, the fee will be based on an estimation and payment will be required of that amount. The fee will be adjusted, based on actual use, after use is made. Refunds will be made or additional payment will be required to the extent the payment requirement for actual use varies from the initial amount paid by $10. (3) If an applicant is unable to pay the fee in advance, the authorized officer may allow the posting of a payment bond or other guarantee in an amount equal to the actual or estimated fee. The authorized officer will establish a payment date which is no later than 15 days following the use period.

(d) *Exceptions, exclusions, and exemptions.* (1) Nothing contained herein shall authorize Federal hunting, trapping, or fishing licenses, permits, or fees. (2) Fees under provisions of this part shall not be charged and permits shall not be required for commercial or other activities not related to recreation. Permits may be required but fees shall not be charged for uses including, but not limited to, organized tours or outings conducted for educational or scientific purposes related to the resources of the area visited by bona fide institutions established for these purposes. (3) Applicants for waiver of fees on this basis shall be required to provide documentation of their official recognition as educational or scientific institutions by Federal, State, or local government bodies and shall also be required to provide a statement as to the purposes of the visit proposed. (4) The use of areas for which a fee waiver is requested must relate directly to scientific or educational purposes. (5) No fee shall be charged for those special recreation permits required for: (i) Any hospital patient actively involved in medical treatment or therapy in the area visited; (ii) educational and therapeutic institutions that are not commercial; and (iii) individuals, and individual immediate families except in certain special areas. The authorized officer may determine that permits and fees are unnecessary where an event begins and ends on nonpublic lands, traverses less than 1 mile of public lands, and poses no threat of significant damage to public resource values.

§ 8372.5 Terms.

(a) *General.* (1) The authorized officer may suspend a special recreation permit if necessary to protect public health, public safety, or the environment. The terms of the permit shall continue to run during any such suspension. (2) Permits may be issued for a day, season of use, or such other time period considered appropriate by the authorized officer for the use involved. (3) A special recreation permit will not be issued for an area larger than the authorized officer determines is necessary for the contemplated use. The land may be surveyed or unsurveyed. (4) The operator or permittee shall allow the authorized officer, or other duly authorized representative of the Bureau, to have access to and the right to examine any directly pertinent books, documents, papers, and records of the operator or permittee involving transactions related to the permit. The operator or permittee also will allow the authorized officer, or other duly authorized representative of the Bureau, to have access to and the right to examine any directly pertinent books, documents, papers, and records of any employee or agent of the permittee or operator. These allowances and rights terminate 3 years after the expiration of the permit.

(b) *Stipulations.* A special recreation permit will contain such stipulations as the authorized officer considers necessary to protect the lands and resources involved and the public interest in general.

(c) *Bonds.* In addition to a payment bond, the authorized officer may require the posting of a cash or surety bond or other guarantee in such form and in such amount as the authorized officer determines to be sufficient to defray the costs of restoration and rehabilitation of the lands affected by the permitted use. Bonds and guarantees will be returned to the permittee upon satisfactory compliance with all permit stipulations, including restoration and rehabilitation requirements.

(d) *Insurance.* The authorized officer shall require all commercial and competitive applicants, and may require other applicants, to obtain and submit a property damage, personal injury, and public liability insurance policy which he judges sufficient to protect the public and the United States. The policy shall name the U.S. Government as a co-insured and stipulate that the authorized officer of the Bureau of Land Mangement shall be notified 30 days in advance of the termination or modification of the policy.

(e) *Liability.* The permittee shall indemnify the United States against any responsibility or liability for damage, injury, or loss to persons and property which may occur during the permitted use period or as a result of such use.

(f) *Violation of law.* The conviction of a violation of any Federal or State law or regulation concerning the conservation or protection of natural resources, the environment, endangered species, or antiquities that is related to said special recreation permit may result in the cancellation of the permit.

Dated: September 7, 1978.

GUY R. MARTIN,
Assistant Secretary of the Interior.

[FR Doc. 78-25584 Filed 9-11-78; 8:45 am]

GPO 850 - 227

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2436]

PART 3300—OUTER CONTINENTAL SHELF LEASING; GENERAL

Subpart 3302—Issuance of Leases

The Department of the Interior has determined that this document is not a significant regulatory action requiring the preparation of a regulatory analysis under Executive Order 12044.

Accordingly, under the authority of section 205 of the Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95-372), section 3302.5 of subpart 3302, part 3300, group 3300, subchapter C, chapter II, title 43 of the Code of Federal Regulations is amended by deleting the figure "30" in the two instances where it appears and substituting in lieu thereof the figure "60".

GARY J. WICKS,
Acting Assistant Secretary of the Interior.

SEPTEMBER 22, 1978.

[FR Doc. 78-27222 Filed 9-27-78; 8:45 am]

Published 43 F. D. 44531, September 28, 1978 - Effective September 28, 1978

Circular Distribution List

GPO 850-323

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2437]

PART 3300—OUTER CONTINENTAL SHELF LEASING; GENERAL

Subpart 3308—Leasing Program

Under the authority of section 18(f) of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1344), Part 3300, Group 3300, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations is amended by adding a new subpart 3308 as set forth below:

Sec.

3308.0-1 Purpose.
3308.0-2 Authority.
3308.0-5 Definitions.
3308.1 Receipt and consideration of nominations; public notice and participation.
3308.2 Review by State and local governments.
3308.3 Periodic consultation with interested parties.
3308.4 Consideration of coastal zone management program.

§ 3308.01 Purpose.

The purpose of this subpart is to provide procedures for the development of a 5-year OCS leasing program. The leasing program shall consist of a schedule of proposed lease sales indicating, as precisely as possible, the size, timing, and location of leasing activity which the Secretary of the Interior determines will best meet national energy needs for the 5-year period following its approval or reapproval and shall include estimates of the required appropriations and staff. This leasing program shall be prepared and maintained in a manner consistent with the principles of section 18(a) of the OCS Lands Act, as amended (43 U.S.C. 1344).

§ 3308.0-2 Authority.

Outer Continental Shelf Lands Act of 1953, as amended (43 U.S.C. 1331 et. seq.).

§ 3308.0-5 Definitions.

As used in this subpart, the term:

(a) "Affected State" and "affected States" means Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, California, Oregon, Washington, and Alaska.

(b) "OCS" means Outer Continental Shelf.

(c) "Secretary" means the Secretary of the Interior.

§ 3308.1 Receipt and consideration of nominations; public notice and participation.

During preparation of a proposed 5-year leasing program, the Secretary shall invite and consider suggestions and relevant information for such program from Governors of affected States, local government, industry, other Federal agencies, including the Attorney General in consultation with the Federal Trade Commission, and all interested parties, including the general public. This request for information shall be issued as a notice in the FEDERAL REGISTER. Local governments wishing to respond to such request shall first submit their responses to the Governor of the State in which the local government is located.

The Secretary shall send letters to the Governors of the affected States requesting them to identify specific laws, goals, and policies which they believe should be considered by the Secretary in connection with the leasing program. The Secretary shall also request from the Secretary of Energy information on regional and national

Published in 43 F.R. 49983, October 26, 1978 - Effective Date October 26, 1978

Circular Distribution List

energy markets, on OCS production goals and on transportation networks.

§ 3308.2 Review by State and local governments.

(a) (1) The Secretary shall prepare a proposed leasing program. At least 60 days prior to publication of the proposed program in the FEDERAL REGISTER, a copy of the draft of the proposed program shall be forwarded to the Governor of each affected State for comment. The Governor may solicit comments from local governments in his or her State which the Governor determines will be affected by the proposed program.

(2) The Secretary shall reply in writing to any comment on the draft of the proposed program from the Governor of an affected State which is received at least 15 days prior to the submission of the proposed program to the Congress and publication in the FEDERAL REGISTER. All such correspondence between the Secretary and Governor of such State shall accompany the proposed program when it is submitted to the Congress.

(b) The proposed leasing program shall be submitted to the Governors of the affected States for review and comment at the time it is submitted to the Congress and the Attorney General and published in the FEDERAL REGISTER. The Governor of an affected State shall, upon request from any local government affected by the program, submit a copy of the proposed program to such local government. Comments and recommendations on any aspect of the proposed program may be submitted by a State or local government to the Secretary within 90 days after the date of its publication in the FEDERAL REGISTER. Comments and recommendations from local governments shall be submitted first to the Governor of the State in which the local government is located.

(c) At least 60 days prior to approving the final leasing program, the Secretary shall submit it to the President and the Congress, together with any comments received on the proposed program. The Secretary shall indicate in each submission why any specific recommendation of the Attorney General or of a State or local government was not accepted.

§ 3308.3 Periodic consultation with interested parties.

The Secretary shall provide for periodic consultation with State and local governments, existing and potential oil and gas lessees and permittees, and representatives of other individuals or organizations engaged in any activity in or on the OCS, including those involved in fish and shellfish recovery, and recreational activities. This consultation shall take place primarily through appropriate public notice as described in § 3308.1 and § 3308.2 and through the OCS Advisory Board and its committees, on a regional and national basis. Meetings of the OCS Advisory Board shall be held on specific issues as required by the Board's charter.

§ 3308.4 Consideration of coastal zone management program.

In the development of the leasing program, consideration shall be given to the coastal zone management program being developed or administered by an affected coastal State under section 305 or 306 of the Coastal Zone Management Act of 1972 as amended, (16 U.S.C. 1454, 1455). Information concerning the relationship between a State's coastal zone management program and OCS oil and gas activity shall be requested from the Governors of the affected coastal States and from the Secretary of Commerce prior to the development of the proposed leasing program at the time information is requested under § 3308.1 of this title.

Dated: October 19, 1978.

LARRY E. MEIEROTTO,
Deputy Secretary of the Interior.

[FR Doc. 78-30096 Filed 10-25-78; 8:45 am]

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2437—A]

PART 2650—ALASKA NATIVE SELECTIONS

Under the authority of the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.), part 2650, group 2600, subchapter B, chapter II, title 43 of the Code of Federal Regulations is amended by revising sections 2650.0-5 and 2650.4-7 as set forth below.

Subpart 2650—Alaska Native Selections—Generally

* * * * *

§ 2650.0-5 Definitions.

* * * * *

(n) "LUPC" means the Joint Federal-State Land Use Planning Commission for Alaska.

(o) "Major waterway" means any river, stream, or lake which has significant use in its liquid state by watercraft for access to publicly owned lands or between communities. Significant use means more than casual, sporadic or incidental use by watercraft, including floatplanes, but does not include use of the waterbody in its frozen state by snowmobiles, dogsleds or skiplanes. Designation of a river or stream as a major waterway may be limited to a specific segment of the particular waterbody.

(p) "Present existing use" means use by either the general public which includes both Natives and non-Natives alike or by a Federal, State, or municipal corporation entity on or before December 18, 1976, or the date of selection, whichever is later. Past use which has long been abandoned shall not be considered present existing use.

(q) "Public easement" means any easement reserved by authority of section 17(b) of the act and under the criteria set forth in these regulations. It includes easements for use by the general public and easements for use by a specific governmental agency. Public easements may be reserved for transportation, communication and utility purposes, for air, light or visibility purposes, or for guaranteeing international treaty obligations.

(r) "Publicly owned lands" means all Federal, State, or municipal corporation (including borough) lands or interests therein in Alaska, including public lands as defined herein, and submerged lands as defined by the Submerged Lands Act, 43 U.S.C. 1301, et seq.

(s) "Director" means the Director, Bureau of Land Managment

(t) "Isolated tract" means a tract of one or more contiguous parcels of publicly owned lands completely surrounded by lands held in nonpublic ownership or so effectively separated from other publicly owned lands as to make its use impracticable without a public easement for access.

(u) "State" means the State of Alaska.

* * * * *

§ 2650.4-7 Public easements.

(a) *General requirements.* (1) Only public easements which are reasonably necessary to guarantee access to publicly owned lands or major waterways and the other public uses which are contained in these regulations, or to guarantee international treaty obligations shall be reserved.

(2) In identifying appropriate public easements assessment shall be made in writing of the use and purpose to be accommodated.

(3) The primary standard for determining which public easements are reasonably necessary for access shall be present existing use. However, a public easement may be reserved absent a demonstration of present existing use only if it is necessary to guarantee international treaty obligations, if there is no reasonable alternative route or site available, or if the public easement is for access to an isolated tract or area of publicly owned land. When adverse impacts on Native culture, lifestyle, and subsistence needs are likely to occur because of the reservation of a public easement, alternative routes shall be assessed and reserved where reasonably available. The natural environment and other relevant factors shall also be considered.

(4) All public easements which are reserved shall be specific as to use, location, and size. Standard sizes and uses which are delineated in this subsection may be varied only when justified by special circumstances.

(5) Transportation, communication, and utility easements shall be combined where the combination of such easements is reasonable considering the primary purposes for which easement is to be reserved.

(6) Public easements may be reserved to provide access to present existing Federal, State, or municipal corporation sites; these sites themselves shall not be reserved as public easements. Unless otherwise justified, access to these sites shall be limited to government use.

(7) Scenic easements or easements for recreation on lands conveyed pursuant to the Act shall not be reserved. Nor shall public easements be reserved to hunt or fish from or on lands conveyed pursuant to the Act.

(8) The identification of needed easements and major waterways shall include participation by appropriate Natives and Native corporations, LUPC, State, Federal agencies, and other members of the public.

(9) After reviewing the identified easements needs, the Director shall tentatively determine which easements shall be reserved. Tentative determinations of major waterways shall also be made by the Director and shall apply to rivers, streams, and lakes. All lakes over 640 acres in size shall be screened to determine if they qualify as major waterways. Those smaller than 640 acres may be considered on a case-by-case basis. The Director shall issue a notice of proposed easements which notifies all parties that participated in the development of the easement needs and information on major waterways as to the tentative easement reservations and which directs that all comments be sent to the LUPC and the Director.

Published in 41 F.R. 55326, November 27, 1978,

without a Circular Number. Circular Number has been assigned.

Circular Distribution List

(10) The State and the LUPC shall be afforded 90 days after notice by the Director to make recommendations with respect to the inclusion of public easements in any conveyance. If the Director does not receive a recommendation from the LUPC or the State within the time period herein called for, he may proceed with his determinations.

(11) Prior to making a determination of public easements to be reserved, the Director shall review the recommendations of the LUPC, appropriate Native corporation(s), other Federal agencies, the State, and the public. Consideration shall be given to recommendations for public easement reservations which are timely submitted to the Bureau of Land Management and accompanied by written justification.

(12) The Director, after such review, shall prepare a decision to convey that includes all necessary easements and other appropriate terms and conditions relating to conveyance of the land. If the decision prepared by the Director is contrary to the LUPC's recommendations, he shall notify the LUPC of the variance(s) and shall afford the LUPC 10 days in which to document the reasons for its disagreement before making his final decision. The Director shall then issue a Decision to Issue Conveyance (DIC).

(13) The Director shall terminate a public easement if it is not used for the purpose for which it was reserved by the date specified in the conveyance, if any, or by December 18, 2001, whichever occurs first. He may terminate an easement at any time if he finds that conditions are such that its retention is no longer needed for public use or governmental function. However, the Director shall not terminate an access easement to isolated tracts of publicly owned land solely because of the absence of proof of public use. Public easements which have been reserved to guarantee international treaty obligations shall not be terminated unless the Secretary determines that the reasons for such easements no longer justify the reservation. No public easement shall be terminated without proper notice and an opportunity for submission of written comments or for a hearing if a hearing is deemed to be necessary by either the Director or the Secretary.

(b) *Transportation easements.* (1) Public easements for transportation purposes which are reasonably necessary to guarantee the public's ability to reach publicly owned lands or major waterways may be reserved across lands conveyed to Native corporations. Such purposes may also include transportation to and from communities, airports, docks, marine coastline, groups of private holdings sufficient in number to constitute a public use, and government reservations or installations. Public easements may also be reserved for railroads. If public easements are to be reserved, they shall:

(i) Be reserved across Native lands only if there is no reasonable alternative route of transportation across publicly owned lands;

(ii) Within the standard of reasonable necessity, be limited in number and not duplicative of one another (nonduplication does not preclude separate easements for winter and summer trails, if otherwise justified);

(iii) Be subject only to specific uses and sizes which shall be placed in the appropriate interim conveyance and patent documents;

(iv) Follow existing routes of travel unless a variance is otherwise justified;

(v) Be reserved for future roads, including railroads and roads for future logging operations, only if they are site specific and actually planned for construction within 5 years of the date of conveyance;

(vi) Be reserved in topographically suitable locations whenever the location is not otherwise determined by an existing route of travel or when there is no existing site;

(vii) Be reserved along the marine coastline only to preserve a primary route of travel between coastal communities, publicly owned uplands, or coastal communities and publicly owned uplands;

(viii) Be reserved from publicly owned uplands to the marine coastline only if significant present existing use has occurred on those publicly owned lands below the line of mean high tide. However, for isolated tracts of publicly owned uplands, public easements may be reserved to provide transportation from the marine coastline if there is no other reasonable transportation route;

(ix) Be reserved along major waterways only to provide short portages or transportation routes around obstructions. However, this condition does not preclude the reservation of a trail or road easement which happens to run alongside a waterway;

(x) Not be reserved on the beds of major waterways except where use of the bed is related to road or trail purposes, portaging, or changing the mode of travel between water and land (e.g., launching or landing a boat); a specific portion of the bed or shore of the waterway which is necessary to provide portage or transportation routes around obstructions, including those that are dangerous or impassible or seasonably dangerous or impassible, may be reserved.

(xi) Not be reserved on the beds of nonmajor waterways except where use of the beds is related to road or trail purposes. However, this exception shall not be used to reserve a continuous linear easement on the streambed to facilitate access by boat.

(xii) Not be reserved simply to reflect patterns of Native use on Native lands;

(xiii) Not be reserved for the purpose of protecting Native stockholders from their respective corporations;

(xiv) Not be reserved on the basis of subsistence use of the lands of one village by residents of another village.

(2) Transportation easements shall be limited to roads and sites which are related to access. The use of these easements shall be controlled by applicable Federal, State, or municipal corporation laws or regulations. The uses stated herein will be specified in the interim conveyance and patent documents as permitted uses of the easement.

(i) The width of a trail easement shall be no more than 25 feet if the uses to be accommodated are for travel by foot, dogsleds, animals, snowmobiles, two and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs. G.V.W.);

(ii) The width of a trail easement shall be no more than 50 feet if the uses to be accommodated are for travel by large all-terrain vehicles (more than 3,000 lbs. G.V.W.), track vehicles and 4-wheel drive vehicles, in addition to the uses included under subdivision (i) of this subparagraph;

(iii) The width of an existing road easement shall be no more than 60 feet if the uses to be accommodated are for travel by automobiles or trucks in addition to the uses included under subdivisions (i) and (ii) of this subparagraph. However, if an existing road is wider than 60 feet, the specific public easement may encompass that wider width. For proposed roads, including U.S. Forest Service logging roads, the width of the public easement shall be 100 feet, unless otherwise justified. Prior to construction, trail uses which are included under subdivisions (i) and (ii) of this subparagraph may be permitted if otherwise justified and may continue if the road is not built. If after the road has been constructed a lesser width is sufficient to accommodate the road, the Director shall reduce the size of the easement to that width.

(iv) The width of a proposed railroad easement shall be 100 feet on either side of the center line of any such railroad.

(3) *Site Easements.* Site easements which are related to transportation may be reserved for aircraft landing or vehicle parking (e.g., aircraft, boats, ATV's, cars, trucks), temporary camping, loading or unloading at a trail head, along an access route or waterway, or within a reasonable distance of a transportation route or waterway where there is a demonstrated need to provide for transportation to publicly owned lands or major waterways. Temporary camping, loading, or unloading shall be limited to 24 hours. Site easements shall not be reserved for recreational use such as fishing, unlimited camping, or other purposes not associated with use of the public

easement for transportation. Site easements shall not be reserved for future logging or similar operations (e.g., log dumps, campsites, storage or staging areas). Before site easements are reserved on transportation routes or on major waterways, a reasonable effort shall be made to locate parking, camping, beaching, or aircraft landing sites on publicly owned lands; particularly, publicly owned lands in or around communities, or bordering the waterways. If a site easement is to be reserved, it shall:

(i) Be subject to the provisions of subsections (b)(1)(ii), (iii), (vi), (xii), (xiii), and (xiv).

(ii) Be no larger than one acre in size and located on existing sites unless a variance is in either instance, otherwise justified;

(iii) Be reserved on the marine coastline only at periodic points along the coast where they are determined to be reasonably necessary to facilitate transportation on coastal waters or transportation between coastal waters and publicly owned uplands;

(iv) Be reserved only at periodic points on major waterways. Uses shall be limited to those activities which are related to travel on the waterway or to travel between the waterway and publicly owned lands. Also, periodic site easements shall be those necessary to allow a reasonable pattern of travel on the waterway;

(v) Be reserved for aircraft landing strips only if they have present significant use and are a necessary part of a transportation system for access to publicly owned lands and are not suitable for reservation under section 14(c)(4) of the act. Any such easement shall encompass only that area which is used for takeoffs and landings and any clear space around such site that is needed for parking or public safety.

(c) *Miscellaneous easements.* The public easements referred to in this subsection which do not fall into the categories above may be reserved in order to continue certain uses of publicly owned lands and major waterways. These public easements shall be limited in number. The identification and size of these public easements may vary from place to place depending upon particular circumstances. When not controlled by applicable law or regulation, size shall not exceed that which is reasonably necessary for the purposes of the identified easement. Miscellaneous easements may be reserved for the following purposes:

(1) Public easements which are for utility purposes (e.g., water, electricity, communications, oil, gas, and sewage) may be reserved and shall be based upon present existing use. Future easements for these purposes may also be reserved, but only if they are site specific and actually planned for construction within 5 years of the date of conveyance;

(2) Easements for air light or visibility purposes may be reserved if required to insure public safety or to permit proper use of improvements developed for public benefit or use; e.g., protection for aviation or navigation aids or communications sites;

(3) Public easements may be reserved to guarantee international treaty obligations or to implement any agreement entered into between the United States and the Native Corporation receiving the conveyance. For example, the agreement of May 14, 1974, related to Naval Petroleum Reserve Number Four (redesignated June 1, 1977, as the National Petroleum Reserve-Alaska) between the United States Department of the Navy and the Arctic Slope Regional Corporation and four Native village corporations, shall be incorporated in the appropriate conveyances and the easements necessary to implement the agreement shall be reserved.

(d) *Conveyance provisions.* (1) Public easement provisions shall be placed in interim conveyances and patents.

(2) Permissible uses of a specific easement shall be listed in the appropriate conveyance document. The conveyance documents shall include a general provision which states that uses which are not specifically listed are prohibited.

(3) The easements shall be identified on appropriate maps which shall be part of the pertinent interim conveyance and patent.

(4) All public easement shall be reserved to the United States and subject, as appropriate, to further Federal, State, or municipal corporation regulation.

(5) All conveyance documents shall contain a general provision which states that pursuant to section 17(b)(2) of the Act, any valid existing right recognized by the Act shall continue to have whatever right of access as is now provided for under existing law.

CECIL D. ANDRUS,
Secretary of the Interior.

NOVEMBER 20, 1978.

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY, WASHINGTON, D.C. 20240

SECRETARIAL ORDER 3028

Subject: Revocation of Secretarial Order 2982.

Section 1. *Revocation.*

(a) Secretarial Order 2982, dated February 5, 1976, provides for the reservation of local easements pursuant to section 17(b) of the Alaska Native Claims Settlement Act (ANCSA).

(b) In an effort to speed the conveyance of lands to Alaska Natives, a thorough review of the Department's ANCSA policies was initiated, including policies concerning easement reservations. The Department's new policy, as stated in a memorandum and decision document dated March 3, 1978, calls for new procedures and guidelines for the reservation of public easements pursuant to section 17(b) of ANCSA. This new policy was incorporated and proposed as rulemaking in the FEDERAL REGISTER on May 25, 1978, (43 FR 22620).

As stated in the proposed rulemaking, Secretarial Order 2982 was to be revoked upon promulgation of final rulemaking. Final rulemaking was published in the FEDERAL REGISTER on ———, 1978, and, accordingly, Secretarial Order 2982 is hereby revoked.

Section 2. *Effective Date.*

This order is effective immediately.

Dated: November 20, 1978.

CECIL D. ANDRUS,
Secretary of the Interior.

[FR Doc. 78-33185 Filed 11-24-78; 8:45 am]

PART 2650—ALASKA NATIVE SELECTIONS

Reservation of Public Easements

Correction

In FR Doc. 78-33185 appearing at page 55326 in the issue for Monday, November 27, 1978, on page 55331, second column, the date which should have been supplied in the blank in the second full paragraph is "November 27, 1978".

GPO 850-996

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2438]

SUBCHAPTER A—GENERAL MANAGEMENT (1000)

PART 1880—FINANCIAL ASSISTANCE, LOCAL GOVERNMENTS

Subpart 1882—Mineral Development Impact Relief Loans

Under the authority of section 317(c) of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1740), Part 1880, Group 1800, Subchapter A, Chapter II of Title 43 of the Code of Federal Regulations is amended by adding a new Subpart 1882 as set forth below.

Subpart 1882—Mineral Development Impact Relief Loans

Sec.
1882.0-1 Purpose.
1882.0-2 Objective.
1882.0-3 Authority.
1882.0-5 Definitions.
1882.1 Loan fund, general.
1882.2 Qualifications.
1882.3 Application procedures.
1882.4 Allocation of funds.
1882.5 Terms and conditions.
1882.5-1 Tenure of loan.
1882.5-2 Interest rate.
1882.5-3 Limitation on amount of loans.
1882.5-4 Loan repayment.
1882.5-5 Security for a loan.
1882.5-6 Use of loan.
1882.5-7 Nondiscrimination.
1882.5-8 Additional terms and conditions.
1882.6 Loan renegotiation.
1882.7 Inspection and audit.

AUTHORITY: Sec. 317(c), Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1740) (90 Stat. 2767).

Subpart 1882—Mineral Development Impact Relief Loans

§ 1882.0-1 Purpose.

The purpose of this subpart is to establish procedures to be followed in the implementation of a program under section 317 of the Federal Land Policy and Management Act to make loans to qualified States and their political subdivisions.

§ 1882.0-2 Objective.

The objective of the program is to provide financial relief through loans to those States and their political subdivisions that are experiencing adverse social and economic impacts as a result of the development of Federal mineral deposits leased under the provisions of the Act of February 25, 1920, as amended.

§ 1882.0-3 Authority.

Section 317(c) of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1744), authorizes the Secretary of the Interior to make loans to States and their political subdivisions to relieve social or economic impacts resulting from the development of Federal minerals leased under the Act of February 25, 1920 (30 U.S.C. 181 et seq.).

§ 1882.0-5 Definitions.

As used in this subpart, the term:

(a) "Secretary" means the Secretary of the Interior.

(b) "Director" means the Director, Bureau of Land Management.

(c) "Act" means the Act of February 25, 1920, as amended (30 U.S.C. 181).

§ 1882.1 Loan fund, general.

Funds appropriated by Congress for loans for relief of adverse social and economic impacts resulting from the development of Federal mineral deposits leased and developed under the Act may be loaned to those States and their political subdivisions who qualify under this subpart. Such loans may be used for: (a) Planning, (b) construction and maintenance of public facilities, and (c) provisions for public services.

§ 1882.2 Qualifications.

(a) Any State receiving payments from the Federal Government under the provisions of section 35 of the Act or any political subdivision of such a State that can document to the satisfaction of the Director that it has suffered or will suffer adverse social and economic impacts as a result of the leasing and development of Federal mineral deposits under the provisions of the Act shall be considered qualified to receive loans made under this subpart.

(b) A loan to a qualified political subdivision of a State receiving payment from the Federal Government under the provisions of section 35 of the Act shall be conditioned upon a showing of proof, satisfactory to the Director, by the political subdivision that it has legal authority to pledge funds payable to the State under section 35 of the Act in sufficient amounts to secure the payment of the loan.

§ 1882.3 Application procedures.

No later than October 1 of the fiscal year in which a loan is to be made, the State or its political subdivision shall submit to the Director a letter signed by the authorized agent requesting a loan. The authorized agent shall furnish proof of authority to act for the State or political subdivision with the application. Such letter shall constitute a formal application for a loan under this subpart and shall contain the following:

(a) The name of the State or political subdivision requesting the loan.

(b) The amount of the loan requested.

(c) The name, address, and position of the person in the State or political subdivision who is to serve as contact on all matters concerning the loan.

(d) A description and documentation of the adverse social and economic impacts suffered as a result of the leasing and development of Federal mineral deposits.

(e) An analysis and documentation of the additional expenses generated as a result of the leasing and development of Federal minerals.

(f) Proposed uses of the funds derived from the loan.

(g) Evidence that the loan and repayment provisions are authorized by State law.

(h) The Director may request any additional information from the applicant that is needed to properly act on the loan application. The applicant shall furnish such additional information in any form acceptable to the applicant and the Director. No loan shall be granted unless such additional in-

Published in 43 F. D. 57886, December 11, 1978 - Effective January 8, 1979

Circular Distribution List

formation is timely received by the Director.

§ 1882.4 Allocation of funds.

If applications for loans exceed the funds appropriated for such purpose, loans shall be allocated among the States and their political subdivisions in a fair and equitable manner, after consultation with the Governors of the affected States, giving priority to those States and political subdivisions suffering the most severe social and economic impacts. The allocation of funds under this section shall be the final action of the Department of the Interior.

§ 1882.5 Terms and conditions.

§ 1882.5-1 Tenure of loan.

Loans shall be for a period not to exceed 10 years. Loan documents shall include a schedule of repayment showing the amount of the principal and interest due on each installment.

§ 1882.5-2 Interest rate.

Loans shall bear interest at a rate equivalent to the lowest interest rate paid on an issue of at least $1 million of bonds exempt from Federal taxes of the applicant State or any agency thereof within the calendar year immediately preceding the year of the loan. Proof of each rate shall be furnished by an applicant with its application.

§ 1882.5-3 Limitation on amount of loans.

Total outstanding loans under this program for qualified States or their political subdivisions shall not exceed the total amount of the qualified State's projected mineral revenues under the Act for the 10 years following. The total outstanding loans shall be the sum of the unpaid balance on all such loans made to a qualified State and all of its qualified political subdivisions.

§ 1882.5-4 Loan repayment.

Loan repayment shall be by withholding mineral revenues payable to the qualified State for itself or its political subdivisions under the Act until the full amount of the loan and interest have been recovered.

§ 1882.5-5 Security for a loan.

The only security for loans made under this subpart shall be the mineral revenues received by a qualified State or its political subdivisions under the Act. Loans made under this subpart shall not constitute an obligation upon the general property or taxing authority of the qualified recipient.

§ 1882.5-6 Use of loan.

A loan made under this subpart may be used for the non-Federal share of the aggregate cost of any project or program otherwise funded by the Federal Government which requires a non-Federal share for such project or program and which provides planning or public facilities otherwise eligible for assistance under the Act.

§ 1882.5-7 Nondiscrimination.

No person shall, on the grounds of race, color, religion, national origin or sex be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity funded in whole or part with funds made available under this subpart.

§ 1882.5-8 Additional terms and conditions.

The Director may impose any terms and conditions that he determines necessary to assure the achievement of the purpose of the loans made under this subsection.

§ 1882.6 Loan renegotiation.

The Secretary may, upon application of a qualified State or one of its qualified political subdivisions, take any steps he determines necessary and justified by the failure of anticipated mineral development or related revenues to materialize as expected when the loan was made under this subpart to renegotiate the loan, including restructuring of the loan. All applications submitted under this section shall set forth in detail the basis for the renegotiation of the loan. The renegotiated loan shall meet the requirements of this subpart to the extent possible.

§ 1882.7 Inspection and audit.

Upon receipt of a loan under this subpart, the grantee of the loan shall establish accounts and related records necessary to record the transactions relating to receipt and disposition of such loan. These accounts and related records shall be sufficiently detailed to provide an adequate inspection and audit by the Secretary and the Comptroller General of the United States.

The loan funds shall not be commingled with other funds of the recipient.

GUY R. MARTIN,
Assistant Secretary of the Interior.

DECEMBER 6, 1978.

[FR Doc. 78-34429 Filed 12-8-78; 8:45 am]

GPO 850-324

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2439]

SUBCHAPTER B—LAND RESOURCES MANAGEMENT

[Group 2700—Disposition; Sales]

PART 2720—CONVEYANCE OF FEDERALLY-OWNED MINERAL INTERESTS

Under the authority of sections 209 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations is amended by adding Part 2720 as set forth below.

PART 2720—CONVEYANCE OF FEDERALLY-OWNED MINERAL INTERESTS

Subpart 2720—Conveyance of Federally-Owned Mineral Interests

Sec.

2720.0-1 Purpose.
2720.0-2 Objectives.
2720.0-3 Authority.
2720.0-5 Definitions.
2720.1 Application to purchase Federally-owned mineral interests.
2720.1-1 Filing of applications.
2720.1-2 Form of applications.
2720.1-3 Action on application.
2720.2 Determination that an exploratory program is not required.
2720.3 Action upon determination of the value of the Federally-owned mineral interests.
2720.4 Issuance of document of conveyance.
2720.5 Appeals.

AUTHORITY: Sections 209 and 310 of Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

Subpart 2720—Conveyance of Federally-Owned Mineral Interests

§ 2720.0-1 Purpose.

The purpose of these regulations is to establish procedures under section 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719, for conveyance of mineral interests owned by the United States where the surface is or will be in non-Federal ownership.

§ 2720.0-2 Objectives.

The objective is to allow consolidation of surface and subsurface or mineral ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate non-mineral development and such development is a more beneficial use of the land than the mineral development.

§ 2720.0-3 Authority.

(a) Section 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719(b), authorizes the Secretary of the Interior to convey mineral interests owned by the United States where the surface is or will be in non-Federal ownership, if certain specific conditions are met.

(b) Section 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1740, authorizes the Secretary of the Interior to promulgate rules and regulations to carry out the purposes of the Act.

§ 2720.0-5 Definitions.

As used in this subpart, the term:

(a) "Prospective record owner" means a person who has a contract or other agreement to purchase a tract of land that is in non-Federal ownership with a reservation of minerals in the United States, or a person who is purchasing a tract of land under the provisions of the Federal Land Policy and Management Act of 1976 or other laws authorizing the conveyance of Federal lands subject to the reservation of a mineral interest.

(b) "Known mineral values" means mineral values in lands with underly-

Published in 44 F.R. 1340 January 4, 1979. Effective Date Corrected by publication in 44 F.R. 4950 January 24, 1979 - Effective Date February 5, 1979

Circular Distribution List

ing geologic formations which are valuable for prospecting for, developing or producing natural mineral deposits. The presence of such mineral deposits in the lands may be known, or geologic conditions may be such as to make the lands prospectively valuable for mineral occurrence.

(c) "Authorized officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this part.

§ 2720.1 Application to purchase Federally-owned mineral interests.

§ 2720.1-1 Filing of application.

Any existing or prospective record owner of the surface of land in which mineral interests are reserved or otherwise owned by the United States may file an application to purchase such mineral interests if (a) He has reason to believe that there are no known mineral values in the land, or (b) The reservation of ownership of the mineral interests in the United States interferes with or precludes appropriate non-mineral development of the land and such development would be a more beneficial use of the land than its mineral development.

§ 2720.1-2 Form of application.

(a) An application shall be filed with the proper BLM Office as listed in § 1821.2-1(d) of this Title.

(b) No specific form is required.

(c) A non-refundable fee of $50 shall accompany the application.

(d) Each application shall include:

(1) The name, legal mailing address, and telephone number of the existing or prospective record owner of the land included in the application;

(2) Proof of ownership of the land included in the application, and in the case of a prospective record owner, a copy of the contract of conveyance or a statement describing the method by which he will become the owner of record;

(3) In the case of non-Federal ownership of the surface, a certified copy of any patent or other instrument conveying the land included in the application to the applicant; and

(4) As complete a statement as possible concerning (i) the nature of Federally-reserved or owned mineral values in the land, including explanatory information, (ii) the existing and proposed uses of the land, (iii) why the reservation of the mineral interests in the United States is interfering with or precluding appropriate non-mineral development of the land covered by the application (iv) how and why such development would be a more beneficial use of the land than its mineral development, and (v) a showing that the proposed use complies or will comply with State and local zoning and/or planning requirements.

§ 2720.1-3 Action on application.

(a) Within 90 days of receipt of an application to purchase Federally-owned mineral interests, the authorized officer shall, if the application meets the requirements for further processing, determine the amount of deposit required and so inform the applicant.

(b) No application filed under this subpart shall be processed until the applicant has either (1) Deposited with the authorized officer an amount of money that the authorized officer estimates is needed to cover administrative costs of processing, including, but not limited to, costs of conducting an exploratory program, if one is required, to determine the character of the mineral deposits in the land, evaluating the existing data [or the data obtained under an approved exploratory program] to aid in determining the fair market value of the mineral interests to be conveyed, and preparing and issuing the documents of conveyance, or (2) has obtained the consent of the authorized officer to conduct an exploratory program, such program to be conducted only under a plan of operations approved by the authorized officer after he has obtained the approval of the U.S. Geological Survey and deposited with the authorized officer an amount of money the authorized officer estimates is needed to cover administrative costs of processing, including, but not limited to, costs of evaluating existing data and data submitted from an approved exploratory program to determine the fair market value of the mineral interests to be conveyed and preparing and issuing the documents of conveyance. The authorized officer in reaching a determination as to whether that are any known mineral values in the land and, if so, the estimated costs of an exploratory program, if one is needed, shall rely upon reports on locatable and saleable minerals prepared by the Bureau of Land Management and mineral resource evaluation reports on leasable minerals prepared by the U.S. Geological Survey.

(c) The authorized officer shall inform the applicant of his determination as to the need for an exploratory program. and where appropriate, the estimated cost of such a program. The applicant may request that the exploratory program be arranged by the authorized officer or request the consent of the authorized officer to accomplish any required exploratory program by other means, at his own expense, under a plan of operations approved by the authorized officer after having obtained the approval of the U.S. Geological Survey and to provide the results to the authorized officer for his use and approval. The applicant shall, within 60 days of receipt of such notice, or any extension thereof, respond to the authorized officer's

notice, stating whether he wishes to have the authorized officer arrange to have conducted the required exploratory program or requests the consent of the authorized officer to accomplish any required exploratory program by other means. Failure to respond to said notice shall void the application.

(d) If the applicant requests that any required exploratory program be arranged by the authorized officer, he shall submit the sum of money required under paragraph (b) of this section and the authorized officer shall, with the approval of the U.S. Geological Survey, have the exploratory program accomplished so as to aid in determining the fair market value of the Federal mineral interests covered by the application.

(e) If the applicant requests the consent of the authorized officer to accomplish any required exploratory program by other means, at his own expense, he shall at the time of making his request for such consent, file a plan of operations to carry out any required exploratory program for approval by the authorized officer, after the authorized officer has obtained the approval of the U.S. Geological Survey. Such plan of operations shall be sufficient to provide the resource and economic data needed to aid in determining the fair market value of the Federal mineral interests to be conveyed. Said resource and economic data shall include, where appropriate, but not be limited to, geologic maps, geologic cross-sections, tables and descriptive information encompassing lithologic, geochemical, and geophysical data, assays of samples, drill logs and outcrop sections, which aid in establishing the location, nature, quantity, and grade, and which aid in determining the fair market value of the Federal mineral interests in the land covered by the application. The plan of operations shall conform to the laws, regulations and ordinances of all governmental bodies having jurisdiction over the lands covered by the application. The authorized officer shall decide within 90 days of receipt of said request whether he shall or shall not give his consent. The authorized officer shall not give his consent if he determines that the plan of operations is not adequate to supply the resource and economic data needed to aid him in determining the fair market value of the Federal mineral interests to be conveyed. If the authorized officer, in his discretion, and with the approval of the plan of operations by the U.S. Geological Survey, approves the applicant's plan of operations, the applicant may proceed to execute the plan of operations, subject to the supervision of the authorized officer and the U.S. Geological Survey. If the authorized officer does not give his consent to the applicant's request, the applicant may, within 60 days of such refusal, avail himself of the provisions of paragraph (d) of this section. Failure to deposit the required sum within the 60 day period shall void the application. All resource and economic data obtained from the approved exploratory program shall be supplied the authorized officer. The authorized officer shall supply that data needed for determination of the economic value of leasable mineral resources to the U.S. Geological Survey and that needed for determination of the economic value of locatable and saleable mineral resources to the Bureau of Land Management. The authorized officer relying upon those determinations shall determine the fair market value of the Federal mineral interests in the land covered by the application. If the authorized officer determines that the resource and economic data supplied from an approved exploratory program is not adequate to aid in determining the fair market value of the Federal mineral interests to be conveyed, he shall so notify the applicant and state what additional data is needed.

(f) Notwithstanding the provisions of the preceding paragraphs of this section, an application may be rejected without the applicant meeting the requirements of paragraph (b) of this section if the authorized officer determines from an examination of the application or of data readily available to him relating to the land concerned that the application does not meet the requirements of the Act.

§ 2720.2 Determination that an exploratory program is not required.

(a) In instances where available data indicate that there are no known mineral values in the land covered by the application, an exploratory program shall not be required.

(b) An exploratory program shall not be required to prove the presence or absence of mineral values where the lands covered by the application are classified prospectively valuable, but such value is found to be only nominal.

§ 2720.3 Action upon determination of the fair market value of the mineral interests.

(a) Upon the authorized officer's determination that all of the requirements of the Act for conveyance of mineral interests have been met by the applicant and all actions necessary

to determine the fair market value of the Federal mineral interests in land covered by the application have been completed, the authorized officer shall notify the applicant in writing of the fair market value of the Federal mineral interests, including the administrative costs involved in development of and issuance of conveyance documents, and give a full and complete statement of the costs incurred in reaching such determination including any sum due the United States or that may be unexpended from the deposit made by the applicant. If the administrative costs of determining the fair market value of the Federal mineral interests exceed the amount of the deposit required of the applicant under this subpart, he will be informed that he is required to pay the difference between the actual costs and the deposit. If the deposit exceeds the administrative costs of determining the fair market value of the Federal mineral interests, the applicant will be informed that he is entitled to a credit for or a refund of the excess. The notice shall also require that payment be made within 90 days from the date of mailing of the notice. Failure to pay the required amount within the allotted time shall constitute a withdrawal of the application and the application will be dismissed and the case closed.

(b) Mineral rights on lands for which an exploratory program is not required under this subpart shall be conveyed upon payment of fair market value for those mineral interests and all administrative costs.

§ 2720.4 Issuance of document of conveyance.

Upon receipt of the payment required by § 2720.3 of this subpart, if any is required, the authorized officer shall issue the necessary document conveying to the applicant the mineral interests of the United States in the land covered by the application.

§ 2720.5 Appeals.

An applicant adversely affected by a decision of the authorized officer made pursuant to the provisions of this subpart shall have a right of appeal pursuant to Part 4 of this Title. Decisions of the authorized officer under this subpart shall be subject to reversal only if found to be arbitrary, capricious, and abuse of discretion or otherwise not in accordance with law.

GUY R. MARTIN,
Assistant Secretary of the Interior.

DECEMBER 29, 1978.

[FR Doc. 79-341 Filed 1-3-79; 8:45 am]

Legal Library

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
79 JUL 23 AM 10 00
RECEIVED
MONTANA STATE OFFICE
BILLINGS, MONTANA

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER D—RANGE MANAGEMENT (4000)

[Circular No. 2440]

PART 4100—GRAZING ADMINISTRATION

Authorizing Grazing Use—Payment of Fees

Under the authority of the Taylor Grazing Act of 1934 as amended (43 U.S.C. 315); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1751); and the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901), § 4130.5-1, Subpart 4130, Part 4100, Subchapter D, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

§ 4130.5-1 Payment of fees.

(a) Grazing fees shall be established annually by the Secretary based upon the grazing fee formula in the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901).

$$\text{Economic Value (Grazing Fee)} = \$1.23 \frac{[FVI + (BCPI - PPI)]}{100}$$

The components of the formula are:

$1.23 = fair market value for base period 1964-1968.
FVI = Forage Value Index
BCPI = Beef Cattle Price Index
PPI = Prices Paid Index

Grazing fees shall be adjusted annually to the computed economic value; subject only to the provision that adjustments, either increases or decreases, shall not be more than 25 percent of the previous year's grazing fee.

GARY J. WICKS,
Acting Assistant Secretary of the Interior.

JANUARY 4, 1979.

[FR Doc. 79-843 Filed 1-9-79; 8:45 am]

Published 44 F.R. 2172, January 10, 1979 - Effective March 1, 1979

Circular Distribution List

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2441]

PART 3830—LOCATION OF MINING CLAIMS

Subpart 3833—Recordation of Mining Claims and Filing Proof of Annual Assessment Work or Notice of Intention To Hold Mining Claims, Mill or Tunnel Sites

Under the authority of section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744), Subpart 3833, Part 3830, Group 3800, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

Subpart 3833—Recordation of Mining Claims and Filing Proof of Annual Assessment Work or Notice of Intention to Hold Mining Claims, Mill or Tunnel Sites.

Sec.

* * * * *

3833.2 Evidence of assessment work/notice of intention to hold claims, or site

* * * * *

3833.2-3 Form—notice of intention to hold claim or site.

* * * * *

§ 3833.0-3 Authority.

* * * * *

(e) The Act of August 31, 1951 (31 U.S.C. 483a) and section 304(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734).

* * * * *

§ 3833.0-5 Definitions.

* * * * *

(e) "Owner" means the person who is the holder of the right to sell or transfer all or any part of the unpatented mining claim, mill or tunnel site. The owner shall be identified in the instruments required by these regulations by a notation on those instruments.

(f) "Federal lands" means any lands or interest in lands owned by the United States, except lands within units of the National Park System, which are subject to location under the General Mining Law of 1872, supra, including, but not limited to, those lands within forest reservations in the National Forest System and wildlife refuges in the National Wildlife Refuge System.

(g) "Proper BLM office" means the Bureau of Land Management office listed in § 1821.2-1(d) of this title as having jurisdiction over the area in which the claims or sites are located.

(h) "Date of location" or "located" means the date determined by State law in the local jurisdiction in which the unpatented mining claim, mill or tunnel site is situated.

(i) "Copy of the official record of the notice of certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim, mill or tunnel site which was or will be filed in the local jurisdiction where the claim or site is located or other evidence, acceptable to the proper BLM office, of such instrument of recordation. It also includes an exact reproduction, duplicate or other acceptable evidence, except microfilm, of an amended instrument which may change or alter the description of the claim or site.

* * * * *

§ 3833.1-2 Manner of recordation—Federal lands.

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, shall file (file shall mean being received and date stamped by the proper BLM office), on or before October 22, 1979, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or certificate of location of the claim or site, a certificate of location containing the information in paragraph (c) of this section shall be filed.

* * * * *

(c) * * *

(1) The name or number of the claim or site, or both, if the claim or site has both;

(2) The name and current mailing address, if known, of the owner or owners of the claim or site;

(3) The type of claim or site;

(4) The date of location;

(5) For all claims or sites located on surveyed or unsurveyed lands, a de-

Effective March 16, 1979

Published in 44 F.R. 9720 February 14, 1979

scription shall be furnished. This description shall recite, to the extent possible, the section(s), the approximate location of all or any part of the claim or site to within a 160 acre quadrant of the section (quarter section) or sections, if more than one is involved. In addition, there must be furnished the township, range, meridian and State obtained from an official survey plat or other U.S. Government map showing either the surveyed or protracted U.S. Government grid, whichever is applicable;

(6) For all claims or sites located on surveyed or unsurveyed land, either a topographic map published by the U.S. Geological Survey on which there shall be depicted the location of the claim or site, or a narrative or sketch describing the claim or site with reference by appropriate tie to some topographic, hydrographic or man-made feature. Such map, narrative description or sketch shall set forth the boundaries and positions of the individual claim or site with such accuracy as will permit the authorized officer of the agency administering the lands or the mineral interests in such lands to identify and locate the claim on the ground. More than one claim or site may be shown on a single map or described in a single narrative or sketch if they are located in the same general area, so long as the individual claims or sites are clearly identified; and

(7) In place of the requirements of (5) and (6) above, an approved mineral survey may be supplied.

(8) Nothing in the requirements for a map and description found in this section shall require the owner of a claim or site to employ a professional surveyor or engineer.

(d) Each claim or site filed shall be accompanied by a one time $5 service fee which is not returnable. A notice or certificate of location shall not be accepted if it is not accompanied by the service fee and shall be returned to the owner.

§ 3833.1-3 When recordation not required.

If the owner of an unpatented mining claim or mill site had on file in the proper BLM office on October 21, 1976, an application for a mineral patent which contains the documents and information required in § 3833.1-2 of this title, except if the application is for a patent for a placer claim which is located on surveyed lands and conforms to legal subdivisions, such applicant need not comply with the requirements of § 3833.1-2(c)(6) of this title, or if the owner of an unpatented mining claim or mill site located on or before October 21, 1976, files in the proper BLM office an application for a mineral patent, as described above, on or before October 22, 1979, the filing of the application shall be deemed full compliance with the recordation requirements of section 314(b) of the Act and the owner of that claim or site shall be exempt from the filing requirements of § 3833.1. For purposes of complying with the requirement of § 3833.2-1(a) of this title, upon notification to the claimant, the date of recordation in the proper BLM office shall be October 21, 1976, for claims and sites included in mineral patent applications on file as of that date. The date on which the application was actually filed shall be the date of recordation for all other claims and sites.

* * * * *

§ 3833.2 Evidence of assessment work-notice of intention to hold a claim or site.

§ 3833.2-1 When filing required.

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, which ever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

(b) The owner of an unpatented mining claim located within the boundaries of units of the National Park System must comply with the requirements of 35 CFR 9.5(d) for annual filing and copies of all those annual filings received by the National Park Service pursuant to that regulation will be given by the National Park Service to the proper BLM office. Compliance with the requirements of that regulation will be deemed full compliance with the requirements of section 314 of the Act for all owners of unpatented mining claims located in any unit of the National Park System.

(c) The owner of an unpatented mining claim located on Federal lands after October 21, 1976, shall, on or before December 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim.

(d) The owner of a mill or tunnel site located on Federal lands shall file in the proper BLM office on or before December 30 of each year following the year of recording pursuant to § 3833.1-2 of this title, a notice of intention to hold the mill or tunnel site.

§ 3833.2-2 Form—evidence of assessment work.

Evidence of annual assessment work shall be in the form of either;

(a) An exact legible reproduction or duplicate, except microfilm, of the affidavit of assessment work performed which was or will be filed for record pursuant to section 314(a) of the Act in the local jurisdiction of the State where the claim or group of claims is located and recorded setting forth the following additional information:

(1) The serial number assigned to each claim by the authorized officer upon filing of the notice or certificate of location or patent application in the proper BLM office. Filing the serial number shall comply with the requirement in the act to file an additional description of the claim.

* * * * *

(b) An exact legible reproduction or duplicate, except microfilm, of the detailed report concerning geological, geochemical and geophysical surveys provided for by the Act of September 2, 1958 (30 U.S.C. 28-1) and filed for record pursuant to section 314(a)(1) of the Act in the local jurisdiction of the State where the claim or group of claims is located and recorded setting forth the following additional information:

* * * * *

§ 3833.2-3 Form—notice intention to hold claim or site.

(a) A notice of intention to hold a mining claim or group of mining claims shall be in the form of either (1) an exact legible reproduction or duplicate, except microfilm, of a letter signed by the owner of a claim or his agent filed for record pursuant to section 314(a)(1) of the Act in the local jurisdiction of the State where the claim is located and recorded setting forth the following information:

(i) The serial number assigned to each claim by the authorized officer upon filing in the proper BLM office of a copy of the notice or certificate of location. Filing the serial number shall comply with the requirement in the act to file an additional description of the claim;

(ii) Any change in the mailing address, if known, of the owner or owners of the claim;

(iii) A statement that the claim is held and claimed by the owner(s) for the valuable mineral contained therein;

(iv) A statement that the owner(s) intend to continue development of the claim; and

(v) The reason that the annual assessment work has not been performed or an affidavit of assessment work performed or a detailed report of geological, geochemical or geophysical survey under § 3833.2-2, has not been filed or

(2) The decision on file in the proper BLM office which granted a deferment of the annual assessment work required by 30 U.S.C. 28, so long as the decision is in effect on the date required for filing a notice of intention to hold a mining claim under § 3833.2-1 of this title or a petition for deferment, a copy of which has been recorded with the appropriate local office, which has not been acted on by the authorized officer.

(b) A notice of intention to hold a mill or tunnel site(s) shall be in the form of a letter signed by the owner or owners of such sites or their agent setting forth the following information:

(1) The serial number assigned to each site by the authorized officer upon filing in the proper BLM office of a copy of the official record of the notice or certificate of location;

(2) Any change in the mailing address, if known, of the owner or owners of the site(s); and

(3) In the case of a mill site, a statement that a claim-related site will continue to be used for mining or milling purposes or that an independent mill site will continue to be used for the purposes of a quartz mill or reduction works; or

(4) In the case of a tunnel site, a statement that the owner(s) will continue to prosecute work on the tunnel with reasonable diligence for the discovery or development of the vein or lode.

§ 3833.4 Failure to file.

(a) The failure to file an instrument required by §§ 3833.1-2 (a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void.

* * * * *

§ 3833.5 Effect of recording and filing.

* * * * *

(b) Nothing in this subpart shall be construed as a waiver of the assessment work requirements of section 2324 of the Revised Statutes, as amended (30 U.S.C. 28). Compliance with the requirements of this subpart shall be in addition to and not a substitute for compliance with the requirements of section 2324 of the Revised Statutes and with laws and regulations issued by any State or other authority relating to performance of annual assessment work.

(c) Filing of instruments pertaining to mining claims under other Federal law with the BLM or other Federal agency shall not excuse the filings re-

quired by this subpart and filings under this subpart shall not excuse the filing of instruments pertaining to mining claims under any other Federal law, except that filing a notice or certificate of location or an affidavit of annual assessment work under this subpart which is marked by the owner as also being filed under the Act of April 8, 1948 (62 Stat. 162) or the Act of August 11, 1955 (30 U.S.C. 621-625), will satisfy the recording requirement for O & C lands under 43 CFR subpart 3821 and Pub. L. 359 lands under 43 CFR Part 3730, or as provided in § 3833.2-1(b) of this title.

(d) In the case of any action or contest affecting an unpatented mining claim, mill or tunnel site, only those owners who have recorded their claim or site pursuant to § 3833.1-2 or filed a notice of transfer of interest pursuant to § 3833.3, shall be considered by the United States as parties whose rights are affected by such action or contest and shall be personally notified. All methods reasonably calculated to insure that those parties receive actual notice of the action or contest shall be employed. If those methods are not successful, the interested parties shall be notified by publication in accordance with 43 CFR 4.450. Owners who have not recorded a claim or site or filed a notice of transfer shall not be personally served and will be bound by any contest proceeding even though they have not been personally served. This section applies to all unpatented mining claims, mill or tunnel sites located after October 21, 1976, and shall apply to such claims or sites located on or before October 21, 1976, only after they have been recorded pursuant to § 3833.1-2 of this title.

(f) Failure of the government to notify an owner upon his filing or recording of a claim or site under this subpart that such claim or site is located on lands not subject to location or otherwise void for failure to comply with Federal or State law or regulations shall not prevent the government from later challenging the validity of or declaring void such claim or site in accordance with due process of law.

(g) Any person who files an instrument required by these regulations knowing the same to contain any false, fictitious or fraudulent statement or entry, may be subject to criminal penalties under 18 U.S.C. 1001.

GUY R. MARTIN,
Assistant Secretary of the Interior.

FEBRUARY 9, 1979.

[FR Doc. 79-4797 Filed 2-13-79; 8:45 am]

☆U.S. Government Printing Office: 1979 — 679-122/446

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2442]

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

PART 3200—GEOTHERMAL RESOURCES LEASING, GENERAL

PART 3220—COMPETITIVE LEASES

Under the authority of the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) Parts 3200 and 3220, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations are amended as set forth below.

§ 3203.2 Lease acreage limitation.

(a) A geothermal lease may not embrace more than 2,560 acres in a reasonably compact area, except where a departure is occasioned by an irregular subdivision or subdivisions, entirely within an area of 6 miles square or within an area not exceeding six surveyed or protracted sections in length or width measured in cardinal directions. A lease offer may not exceed 2,560 acres except where the rule of approximation applies.

(b) No lease shall be issued for less than 640 acres, except at the discretion of the Secretary. The Secretary may issue a lease for less than 640 acres where geothermal resources will be utilized for non-electrical purposes, or as provided for in part 3230 of this chapter with respect to "conversion rights."

(c) Where a departure is occasioned by an irregular subdivision, the leased acreage may be less than 640 acres by an amount which is smaller than the amount by which the area would be more than 640 acres if the irregular subdivision were added.

(d) The authorized officer may add isolated tracts of more or less than 640 acres in nearby sections, to a lease application where it is determined that such addition is necessary for the proper management of the resource, provided the additional lands will not cause the lessee to exceed the maximum acreage limitation as provided in § 3201.2(a) of this chapter. However, prior to the issuance of such a lease based on the application as amended by the authorized officer, the applicant shall be given the option to refuse such a lease. Failure of the applicant to execute and return the lease within 30 days after receipt thereof will constitute a withdrawal of the application, as amended, without further notice.

§ 3203.6 Plans of development and operation.

No entry upon the leased lands for purposes other than casual use as defined in § 3209.0-5(d) of this chapter will be permitted until either a notice of intent or a plan of operation has been approved.

(a) The lessee shall submit a notice of intent in accordance with 30 CFR 270.78 prior to entry upon the lands for purposes of conducting exploration operations as defined in § 3209.0-5 of this chapter.

(b) The lessee shall submit a plan of operation pursuant to 30 CFR 270.34, prior to entry upon the leased lands for purposes of drilling exploratory and development wells, including construction of testing and production facilities, except as provided in (a) of this section. Subsequent well operations shall be conducted under a modified or amended plan of operations as provided in 30 CFR 270.35.

§ 3204.3 Readjustment of terms and conditions.

(a) (1) Except as otherwise provided by law, the terms and conditions of any geothermal lease may be readjusted as determined by the authorized officer at not less than 10-year intervals beginning 10 years after the date the geothermal resource is produced and utilized commercially for any purpose including the generation of electricity.

Published 44 F.R. 12037, March 5, 1979 - Effective April 4, 1979

Circular Distribution List

(2) At such time as the geothermal resource is being commercially produced, the authorized officer shall give notice to the lessee, by written decision, of any proposed readjustment of the terms and conditions of the lease and the nature thereof, and unless the lessee files with the authorized officer an objection to the proposed terms and conditions or relinquishes the lease within 30 days after receipt of such notice, the lessee shall be deemed conclusively to have agreed to such terms and conditions. If the lessee files objections, and agreement cannot be reached between the authorized officer and the lessee within a period of 60 days, the lease may be terminated by either party, subject to the provisions of § 3000.4 of this chapter. If the lessee files objections to the proposed readjusted terms and conditions, the existing terms and conditions will remain in effect until there has been an agreement between the authorized officer and the lessee on the new terms and conditions to be applied to the lease or until the lease is terminated. The readjustment of any terms concerning rental and royalty rates will be subject to § 3205.3 of this chapter.

(b) Any readjustment of the terms and conditions of any lease of lands withdrawn or acquired in aid of a function of a Federal department or agency may be made only with the approval of that other agency.

§ 3220.5 Bidding requirements.

(a) A separate identified sealed bid shall be submitted for each lease unit. Each bidder shall submit with the bid a certified or cashier's check, bank draft, money order, or cash in the amount of one-fifth of the amount bid, together with proof of qualifications as required by these regulations. The balance of the bonus bid shall be paid either in a single payment upon the award of the lease or in two equal annual installments due and payable on the next two anniversary dates.

(b) All bidders are warned against violation of the provisions of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders.

(c) If the lease is terminated by relinquishment, or for failure to make timely payment of annual rentals or for any other reason, any unpaid installments of the bonus bid shall be immediately due and payable to the lessor.

§ 3220.6 Award of lease.

(a) All sealed bids shall be opened at the place, date, and hour specified in the notice. No bids will be accepted or rejected at that time.

(b) In the event that the Secretary determines to issue a lease, that lease shall be awarded to the highest responsible qualified bidder, except as required under part 3230 of this chapter.

(c) The right to reject any and all bids is reserved. If the authorized officer fails to accept the highest bid for a lease within 30 days after the date on which the bids are opened (or such longer period as may be needed to comply with § 3230.1-6 of this chapter), all bids for that lease will be considered rejected. Deposits on rejected bids will be returned.

(d) If the lease is awarded, three copies of the lease will be sent to the successful bidder who shall be required to execute them within 30 days from receipt thereof, to pay the first year's rental, file the required bond or bonds; and submit the proposed plan of operation as required by § 3210.2-1(d) of this chapter. When the three copies of the lease are executed by the successful bidder and returned to the authorized officer, the lease will be executed by the authorized officer and a copy will be mailed to the lessee.

(e) If the successful bidder fails to execute the lease or otherwise comply with the applicable regulations, the deposit will be forfeited and disposed of as provided in section 20 of the Act. In this event, the lands may be reoffered when it is determined, in the opinion of the Secretary, that sufficient interest exists to justify a competitive lease sale.

GUY R. MARTIN,
Assistant Secretary of the Interior.

FEBRUARY 27, 1979.

[FR Doc. 79-6449 Filed 3-2-79; 8:45 am]

GPO 850 - 145

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2443]

PART 3250—UTILIZATION OF GEOTHERMAL RESOURCES

Under the authority of the Geothermal Steam Act of 1970 (30 U.S.C. 1001–1025), it is proposed to amend Group 3200, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations by adding Part 3250 as set forth below.

PART 3250—UTILIZATION OF GEOTHERMAL RESOURCES

Subpart 3250—Utilization of Geothemal Resources Through Licensing of Power Plant Sites

Sec.

3250.0–1 Purpose.
3250.0–3 Authority.
3250.0–5 Definitions.
3250.0–6 Policy.
3250.1 Applications.
3250.1–1 Requirements for application.
3250.1–2 Showing of citizenship.
3250.2 Action on application.
3250.3 Environmental analysis.
3250.4 Actions not requiring a license.
3250.4–1 Research and demonstration projects.
3250.4–2 Individual well production utilization.
3250.5 Action required on designated lands.
3250.5–1 Withdrawn or reserved lands.
3250.5–2 Lands under the jurisdiction of the Forest Service.
3250.5–3 Lands subject to section 24 of the Federal Power Act.
3250.5–4 Lands not subject to license.
3250.6 Licenses.
3250.6–1 Area covered by license.
3250.6–2 License provisions.
3250.6–3 Annual rental.
3250.7 Bonds.

Published in 44 F.R. 20390, April 4, 1979 - Effective May 4, 1979

Circular Distribution List

Sec.
3250.8 Assignments and transfers.
3250.9 Relinquishment, expiration or termination.
Authority: Secs. 3 and 24, Geothermal Steam Act of 1970 (30 U.S.C. 1001–1025).

Subpart 3250—Utilization of Geothermal Resources Through Licensing of Power Plant Sites

§ 3250.0–1 Purpose.

The purpose of this subpart is to establish procedures for the utilization of Federal lands under geothermal lease by persons who have purchased or otherwise acquired the production of geothermal steam and geothermal resources for the purpose of generating electric power.

§ 3250.0–3 Authority.

These regulations are issued pursuant to the Geothermal Stream Act of 1970 (30 U.S.C. 1001–1025) which authorizes the Secretary of the Interior to prescribe rules and regulations for the development, utilization, and conservation of geothermal steam resources, protection of the public interest, prevention of waste, and protection of water quality and other environmental qualities. The right to use land under geothermal lease for the purpose of generating electric power may be exercised only in accordance with these regulations.

§ 3250.0–5 Definitions.

As used in this subpart, the term:

(a) "Licensee" means the individual, partnership, corporation, association, municipality or governmental unit which is authorized to use public lands for the construction of facilities and utilization of geothermal resources pursuant to this subpart.

(b) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this subpart.

(c) "Proper BLM office" means the State office of the Bureau of Land Management which administers the land subject to the geothermal lease.

(d) "Power plant site" means that tract of Federal land under geothermal lease authorized for use for a power plant including but not limited to substations, switch yards, waste disposal and storage facilities, utility service lines, transmission lines and appurtenant structures.

(e) "Joint Utilization Agreement" means the arrangement between the holder of a geothermal resource lease and a third party for utilization of geothermal steam and associated geothermal resources produced from a leasehold, for operation of power generating facilities.

(f) "Federal Geothermal Lease" means a lease issued under the Geothermal Steam Act of 1970 pursuant to the leasing regulations contained in Part 3200 of this Title.

(g) "Producible well" means a well capable of producing geothermal steam or geothermal resources in commercial quantities as defined in 30 CFR 270.2 (m) and (n).

§ 3250.0–6 Policy.

It is the policy of this Department to encourage the development and utilization of geothermal resources leased under the Geothermal Steam Act of 1970 in an environmentally acceptable manner. Granting of a lease carries an implied right to reasonable access and land use for development. The provisions of these regulations shall be applied, however, in order to assure reasonable compatibility of a power plant site with other authorized uses and resource values of the land.

§ 3250.1 Applications.

§ 3250.1–1 Requirements for application.

Any lessee or any party to a joint utilization agreement or a sales contract who has completed a producible well or wells and desires a license to use the surface of lands under Federal geothermal lease for construction of an electric generating plant, other than as provided in 30 CFR 270 and § 3250.4 of this subpart, shall file an application for such license with the authorized officer.

(a) An application for a license shall be filed in duplicate in the proper BLM office.

(b) Each application must be accompanied by a non-refundable fee of $50.

(c) No specific form is required.

(d) Each application shall include:

(1) A description of the land applied for by legal subdivision, section, township and range, or by approved protraction surveys, if applicable. If the lands have not been surveyed, the lands shall be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract and connected by courses and distances to an official corner of the public land surveys or a prominent readily identifiable geographic location. The approximate acreage involved shall be included as part of the description.

(2) A map or maps showing the boundaries of the site and the location and dimensions of buildings, cooling towers or ponds, waste disposal or storage sites, switch yards, roads, pipelines, utility service lines, transmission lines, and all other structures or facilities to be used in connection with the utilization of the geothermal steam and associated geothermal resources. In addition, the authorized officer may require maps showing the general location of proposed facilities to be used in connection with the power plant site but outside the license area.

(3) A description of the proposed power plant, including the number and capacity of prime movers and generators proposed to be installed, initially and ultimately, together with similar pertinent information about any substations included in the facility. A prime mover is a machine (turbine) that converts a natural force into productive power. The application shall show whether the proposed power plant is to be interconnected with other generating facilities owned by the applicant or others, and whether the power generated is to be sold to others or used by the applicant for its own commercial or industrial purposes.

(4) A copy of any joint utilization agreement or sales contract entered into with a Federal geothermal lessee or lessees and the applicant for the utilization of geothermal steam and associate geothermal resources.

(5) A statement showing the amount of merchantable timber, if any, to be cut, removed or destroyed in the construction of the proposed plant or facility, and a statement of agreement to deposit with the Bureau of Land Management, in advance of contruction, the dollar amount as determined by the authorized officer to be the full stumpage value of the timber to be cut, removed or destroyed.

§ 3250.1–2 Showing of citizenship.

Licenses shall be issued only to citizens of the United States, associations of such citizens, corporations organized under the laws of the United States, any State or the District of Columbia or governmental units, including, without limitation, municipalities. Applicants shall make showings of citizenship as follows:

(a) Individuals shall furnish a statement of their citizenship.

(b) Associations of individuals, including a partnership, shall furnish a copy of the articles of association, if any. The application must be signed by each member of the association, and be accompanied by a statement of citizenship of each member.

(c) *Corporations.* (1) A private corporation shall furnish a copy of its

charter or articles of incorporation, duly certified by the proper State official of the State where the corporation was organized, and a copy of the resolution or by-laws authorizing the proposed action.

(2) A corporation, other than a private corporation, including a municipality or governmental unit, shall file (i) a statement showing that it is authorized to construct and operate a plant for utilization of geothermal steam or associated geothermal resources; (ii) a statement that the officer executing the application is authorized to act on behalf of the applicant; and (iii) a copy of its governing body's resolution authorizing such action.

(3) When a corporation is operating in a State other than the State in which it was incorporated, it shall submit a certificate of the Secretary of State or other proper official of the State in which it is operating, asserting that the corporation has complied with the laws of that State governing foreign corporations to the extent required to entitle the corporation to operate in such State.

(4) If a corporation has previously filed with the Bureau of Land Management the papers required in this section, the requirements shall be held to be met if, in making a subsequent application, specific reference is made to such previous filing by date, place and case number.

§ 3250.2 Action on application.

Where the authorized officer determines that an application is incomplete or not in conformity with the law or regulations, he shall notify the applicant of the deficiencies and provide an opportunity for correction of the deficiency.

§ 3250.3 Environmental analysis.

The authorized officer, in cooperation with the U.S. Geological Survey, shall conduct a technical examination/environmental analysis in connection with an application for a license filed under this subpart.

(a) The technical examination shall include an evaluation of the impacts of the operation covered by the license on other land uses, resources or land management programs on or adjacent to the area covered by the license in order to determine the appropriate terms and conditions to be incorporated in such license, as well as consultation with State and local jurisdications as may be appropriate.

(b) The environmental analysis shall be performed in cooperation or consultation with such Federal, State and local authorities as may be appropriate.

(c) The environmental analysis shall include an analysis of the impact of the proposed operations set forth in the application and a determination as to whether an environmental impact statement (EIS) is required.

§ 3250.4 Action not requiring a license.

§ 3250.4-1 Research and demonstration projects.

A research and demonstration (R. & D.) project sited on a Federal geothermal lease consisting of a power generating facility of not more than 20 MW's electrical capacity and with a maximum life of five years from the date the facility becomes operational will not require a license under the regulations of this subpart. An R. & D. permit for a facility of 20 MW's or less shall be obtained from the Area Geothermal Supervisor under the provisions of 30 CFR Part 270. In the event an R. & D. project is proposed to be retained for commercial operation after the initial five-year period, a license shall be obtained under this subpart. Application for such a license may be submitted prior to construction or at any time during the 5 year permitted life period of the R. & D. project if conversion of the facility to a power plant is contemplated during the permit period. R. & D. permits granted under 30 CFR 270 shall conform to the provisions of § 3200.0–8 of this Title.

§ 3250.4-2 Individual well production utilization.

A license shall not be required for the purpose of installing a facility for testing or utilization of the production from an individual well for either electrical power generation or any non-electrical beneficial use. In order to install such facility, a permit shall be obtained from the Area Geothermal Supervisor, U.S. Geological Survey under the provisions of 30 CFR Part 270. Permits granted under 30 CFR Part 270 shall conform to the provisions of § 3200.0–8 of this Title. However, a license shall be required for any substation or facility for transmission or lease of more than 10 MW maximum output.

§ 3250.5 Action required on designated lands.

§ 3250.5-1 Withdrawn or reserved lands.

(a) Where the land sought for a power plant site utilizing geothermal steam or associated geothermal resources is withdrawn or reserved for the use of a Federal Agency other than Interior, the authorized officer shall consult with such other agency before the license is issued. The license shall include any terms and conditions required by the surface managing agency.

(b) Where the land sought for a power plant site utilizing geothermal resources is withdrawn or reserved for the use of an Interior agency, the authorized officer shall consult with such agency before the license is issued. The license shall include any terms and conditions deemed appropriate by the authorized officer.

§ 3250.5-2 Lands under the jurisdiction of the Forest Service.

Where the land sought for a power plant site utilizing geothermal resources is on any National Forest System lands, the authorized officer shall consult with and obtain the agreement of the Forest Service regarding the specific site selection before the license is issued. The license shall include terms and conditions required by the Forest Service for protection of National Forest resources and for multi-use management.

§ 3250.5-3 Land subject to section 24 of the Federal Power Act.

Where the land sought for a power plant site utilizing geothermal steam or associated geothermal resources is subject to the provisions of section 24 of the Federal Power Act, as amended (16 U.S.C. 818), the license shall be issued subject to such terms and conditions as the Federal Energy Regulatory Commission, Department of Energy, may prescribe.

§ 3250.5-4 Lands not subject to application.

No license shall be issued for lands which are not subject to leasing for development of geothermal resources, including, but not limited to, lands:

(a) Administered as part of the national park system,

(b) Within a national recreation system,

(c) Within a fish hatchery administered by the Secretary, wildlife refuge, wildlife range, game range, wildlife management area, waterfowl production area, or for lands acquired or reserved for the protection and conservation of fish and wildlife that are threatened with extinction, or which are designated as rare and endangered species by the Secretary, or under active consideration for inclusion in such categories as evidenced by the filing of a application for a withdrawal or a proposed withdrawal, or

(d) Held in trust or restricted status for an Indian tribe or individual, within

or without the boundaries of an Indian reservation.

§ 3250.6 Licenses.

§ 3250.6-1 Area covered by license.

(a) The area approved for the proposed power plant shall be reasonably compact as determined by the authorized officer and shall be limited to as much of the surface of the lands applied for as the authorized officer determines necessary for the adequate utilization of the geothermal resources.

Prior to commencing any surface disturbing activities related to the construction of a power plant facility licensed under provisions of this chapter, a permit to construct and operate a power facility shall be obtained from the Area Geothermal Supervisor. The application for such permit shall be filed in triplicate with the Supervisor, as provided under the regulations set forth in 30 CFR Part 270.

§ 3250.6-2 License provisions.

(a) A license for an electical power plant shall be granted for a primary term of 30 years with a preferential right to a renewal of such license under such terms and conditions as the Secretary may deem appropriate.

(b) A license shall include such terms and conditions as the authorized officer determines are necessary to protect the mineral, environmental, fish and wildlife, historical and scenic or other resource values of the public lands.

(c) A license shall require a copy of any utility commission license or other Federal, State or local license or permit that is applicable to the proposed power plant to be furnished prior to commencement of any activity relating to plant operation.

§ 3250.6-3 Annual rental.

Rental at a rate to be determined by the authorized officer shall be paid annually, but in no event shall said rental be less than $100 per acre. The first year's rental shall be paid to the authorized officer before issuance of the license and thereafter the rental shall be payable annually on or before the anniversary date of the license. The license shall provide that, beginning with the tenth year, the rental for the lands embraced in the license shall be reassessed, excluding improvements due to development of the geothermal resources, at the discretion of the authorized officer upon notice to the licensee, but not more often than at 10 year intervals thereafter, except in extraordinary circumstances.

§ 3250.7 Bonds. Bonds shall be either corporate surety bonds or personal bonds.

(a) *Surety bond.* The licensee shall furnish and maintain a surety bond of not less than $100,000 conditioned upon compliance with all the terms and conditions of the license. The amount of the bond may be increased at any time that it is deemed proper by the authorized officer.

(b) *Personal bond.* In lieu of a surety bond, the licensee may submit a personal bond accompanied by cash in an amount equal to the dollar amount of the bond or negotiable securities of the United States having a market value at the time of the deposit of not less than the required dollar amount of the bond.

(c) *Obligations under bond.* The licensee shall comply with all the terms and conditions of the license under this subpart and shall be (1) liable for all damages to the lands or property of the United States caused by the licensee or his employees or contractors or employees of such contractors, and (2) indemnify the United States against any liability for damages to life, person or property arising from the occupancy or use of the lands under license. Where a power plant license is granted under these regulations to a State or other governmental agency which has no legal power to assume such liability with respect to damages caused by it to lands or property, such agency will be responsible for repair of all such damages.

§ 3250.8 Assignments and transfers.

(a) Any proposed transfers in whole or in part of any right, title or interest in the plant or facility licensed under this subpart must be filed with the authorized officer. The application for transfer must be accompanied by the same showing of qualifications of the transferee as is required of the applicant under this subpart, and must be supported by a stipulation that the assignee will comply with and be bound by all the terms and conditions of the license. No transfer will be valid unless and until it is approved in writing by the authorized officer.

(b) An application for approval of an assignment or transfer made pursuant to this section shall be accompanied by a non-refundable fee of $50.

§ 3250.9 Relinquishment, expiration, or termination of license.

(a) A licensee may surrender a license by filing a written relinquishment, in triplicate, in the proper BLM office. The relinquishment shall include a statement as to whether the land covered by the license has been disturbed and, if so, whether it has been restored as prescribed by the terms and conditions of the license. The relinquishment will not be accepted until the requirements for reclamation of the land have been met.

(b) A license issued under this part may be terminated by written order of the authorized officer for any violation of any applicable regulation or any license term or condition, after 30 days notice. However, the termination shall not take effect if within the 30 day notice period either (1) the violation is corrected or (2) the licensee has commenced in good faith to correct the violation and shall thereafter proceed diligently to correct the violation where the violation is such that it cannot be corrected within the notice period. If a request for appeal is filed within the 30 day notice period, then the licensee shall be entitled to a hearing on the claimed violation and the termination in accordance with part 4 of this title. In the event such appeal is timely filed, the period for commencement to correct such violation shall be extended to 30 days after a final decision is rendered if it is found that a violation exists.

(c) Upon the relinquishment, expiration, or termination of the license, the licensee shall, if directed by the authorized officer, remove all structures, machinery, and other equipment from the land covered by the license. Any structures, machinery, or equipment allowed to remain on the land shall become the property of the United States on the expiration of the period allowed for removal of same. Removal of such property shall be at the licensee's expense.

(d) The licensee shall, for a period of not more than six months, maintain any equipment and facilities needed, as determined by the Area Geothermal Supervisor, for the protection of any wells from which production was being utilized by the licensee.

(e) Where land covered by a license has been disturbed, the licensee shall within one year following the relinquishment, expiration, or termination of a license issued under this part restore the land in accordance with the terms and conditions of the license. Additional time may be granted by the authorized officer upon a showing of good cause by the licensee. The bond required by § 3250.7 of this title shall not be released until the reclamation has been completed to the satisfaction of the authorized officer.

Gary J. Wicks,
Acting Assistant Secretary of the Interior.
March 28, 1979.

[FR Doc. 79-10122 Filed 4-3-79; 8:45 am]

Legal Library

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
JUN -1 AM 10 00
RECEIVED
MONTANA STATE OFFICE
BILLINGS, MONTANA

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2444]

PART 3830—RECORDATION OF MINING CLAIMS AND FILING PROOF OF ANNUAL ASSESSMENT WORK OR INTENTION TO HOLD MINING CLAIMS

Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1740, 1744) and section 2319 of the Revised Statutes (30 U.S.C. 22), Subpart 3833, Part 3830, Group 3800, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

1. Section 3833.1–1 is revised as follows:

§ 3833.1–1 Manner of recordation—National Park System units established before September 28, 1976.

Any unpatented mining claim, mill site or tunnel site in any National Park System unit in existence on September 28, 1976, which was not recorded on or before September 28, 1977, in accordance with the Notice of October 20, 1976 (41 FR 46357) or 36 CFR 9.5 is, pursuant to section 8 of the Act of September 28, 1976 (16 U.S.C. 1907), conclusively presumed to be abandoned and shall be void.

2. Section 3833.1–2 is amended by amending subpargaraph (a) and by adding a sentence to the end of subparagraph (b) as set forth below.

§ 3833.1–2 Manner of recordation—Federal lands.

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, excluding lands within units of the National Park System established before September 28, 1976, but including lands within a national monument administered by the United States Fish and Wildlife Service or the United States Forest Service, shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or certificate of location of the claim or site, a certificate of location containing the information in paragraph (c) of this section shall be filed. Where the claim so recorded lies within a unit of the National Park System, a copy of the documents filed shall be provided to the Superintendent of the appropriate unit by the Bureau of Land Management.

(b) * * * Where the claim so recorded lies within a unit of the National Park System, a copy of the documents filed shall be provided to the Superintendent of the appropriate unit by the Bureau of Land Management.

* * * * *

3. Section 3833.2–1 is amended by revising subparagraph (b), and by amending subparagraphs (c) and (d) as set forth below.

§ 3833.2–1 When filing required.

* * * * *

(b)(1) Except as provided in (2) of this subsection, the owner of an unpatented mining claim, mill site or tunnel site located within any unit of the National Park System shall file before October 22, 1979, and on or before December 30 of each calendar year after the year of recording (See 36 CFR § 9.5), a notice of intention to hold the mining claim, mill site or tunnel site. Such notice shall be in the form prescribed by § 3833.2–3 of this title and shall be filed with the proper BLM office. A copy of each such filing shall be provided to the Superintendent of the appropriate unit by the Bureau of Land Management.

(2) Where a claimant has received a permit under 36 CFR § (9.5 to do assessment work on a claim in a unit of the National Park System, the claimant may file with the Bureau of Land Management in lieu of the notice required by (1) above, evidence of assessment work in the form prescribed in § 3833.2–2 of this title. A copy of such filing shall be provided to the Superintendent of the appropriate unit by the Bureau of Land Management.

(c) The owner of an unpatented mining claim located on Federal lands, excluding lands within a unit of the National Park System, but including lands within a national monument administered by the United States Fish and Wildlife Service or the United States Forest Service, after October 21, 1976, shall, on or before December 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim.

(d) The owner of a mill or tunnel site located on Federal lands, exluding lands within a unit of the National Park System but including lands within a national monument administered by the United States Fish and Wildlife Service or the United States Forest Service, shall file in the proper BLM office on or before December 30 of each year following the year of recording pursuant to § 3833.1–2 of this title, a notice of intention to hold the mill or tunnel site.

Gary J. Wicks,
Acting Assistant Secretary of the Interior.

March 30, 1979.

[FR Doc. 79–10516 Filed 4–4–79; 8:45 am]

Published in 44 F.R. 20428, April 5, 1979 - Effective April 4, 1979

Circular Distribution List

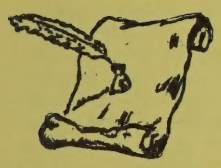
Circular No. 2444-A

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

REGULATIONS PERTAINING TO:

RECORDATION OF UNPATENTED MINING CLAIMS

43 CFR 3833



U.S. Department of the Interior
Bureau of Land Management

Printed May, 1979

PART 3830—LOCATION OF MINING CLAIMS

Subpart 3833—Recordation of Mining Claims and Filing Proof of Annual Assessment Work or Notice of Intention to Hold Mining Claims, Mill or Tunnel Sites.

Sec.
3833.0–1 Purpose.
3833.0–2 Objectives.
3833.0–3 Authority.
3833.0–5 Definitions.
3833.1 Recordation of mining claims.
3833.1–1 Manner of recordation—National Park System.
3833.1–2 Manner of recordation—other Federal lands.
3833.1–3 When recordation not required.
3833.2 Evidence of assessment work/notice of intention to hold claims, or site
3833.2–1 When filing required.
3833.2–2 Form—evidence of assessment work.
3833.2-3 Form—notice of intention to hold claim or site.
3833.2–4 When evidence or notice not required.
3833.3 Notice of transfer of interest.
3833.4 Failure to file.
3833.5 Effect of recording and filing.

§ 3833.0–1 Purpose.

One purpose of these regulations is to establish procedures for the recordation in the proper BLM office of unpatented mining claims, mill sites, or tunnel sites on Federal lands, and for the filing in the same office of evidence of performance of annual assessment work or of a notice of intention to hold an unpatented mining claim. Another purpose is to notify the proper BLM office of the transfer of an interest in unpatented mining claims, mill sites or tunnel sites.

§ 3833.0–2 Objectives.

An objective of these regulations is to determine the number and location of unpatented mining claims, mill sites, or tunnel sites located on Federal lands to assist in the management of those lands and the mineral resources therein. Other objectives are to remove the cloud on the title to these lands because they are subject to mining claims that may have been abandoned and to keep the BLM abreast of transfers of interest in unpatented mining claims, mill sites or tunnel sites. These regulations are not intended to supersede or replace existing recording requirements under State law, except when specifically changed by the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701), and are not intended to make the BLM office the official recording office for all ancillary documents (wills, liens, judgments, etc.) involving an unpatented mining claim, mill site or tunnel site.

§ 3833.0–3 Authority.

(a) Subsections (a) and (b) of section 314 of the Act require the recordation of unpatented mining claims and the filing of information concerning annual assessment work performed or a notice of intention to hold such a claim in the proper BLM office within specified time periods. Subsection (c) sets forth the consequences of the failure to file such information or documents within the time limits prescribed.

(b) Section 8 of the Act of September 28, 1976 (16 U.S.C. 1901–1912), requires that all unpatented mining claims within the boundaries of the National Park System shall be recorded with the Secretary within one year after the date of the Act and provides penalties for failure to record.

(c) Section 2319 of the Revised Statutes (30 U.S.C. 22) provides that the exploration, location, and purchase of valuable mineral deposits shall be "under regulations prescribed by law," and section 2478 of the Revised Statutes, as amended (43 U.S.C. 1201), provides that those regulations will be issued by the Secretary.

(d) The Secretary has general responsibility and authority concerning public lands under 43 U.S.C. 2 and section 310 of the Act.

(e) The Act of August 31, 1951 (31 U.S.C. 483a) and section 304(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734).

§ 3833.0–5 Definitions.

As used in this Subpart:

(a) "The Act" means the Federal Land Policy and Management Act of 1976 (Pub. L. 94–579; 90 Stat. 2743).

(b) "Unpatented mining claim" means a lode mining claim or a placer mining claim located under the General Mining Law of 1872, as amended (30 U.S.C. 21–54), for which a patent under 30 U.S.C. 29 and 34 CFR 3860 has not been issued.

(c) "Mill site" means any land located under 30 U.S.C. 42.

(d) "Tunnel site" means a tunnel located pursuant to 30 U.S.C. 27.

(e) "Owner" means the person who is the holder of the right to sell or transfer all or any part of the unpatented mining claim, mill or tunnel site. The owner shall be identified in the instruments required by these regulations by a notation on those instruments.

(f) "Federal lands" means any lands or interest in lands owned by the United States, except lands within units of the National Park System, which are subject to location under the General Mining Law of 1872, supra, including, but not limited to, those lands within forest reservations in the National Forest System and wildlife refuges in the National Wildlife Refuge System.

(g) "Proper BLM office" means the Bureau of Land Management office listed in § 1821.2-1(d) of this title as having jurisdiction over the area in which the claims or sites are located.

(h) "Date of location" or "located" means the date determined by State law in the local jurisdiction in which the unpatented mining claim, mill or tunnel site is situated.

(i) "Copy of the official record of the notice of certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim, mill or tunnel site which was or will be filed in the local jurisdiction where the claim or site is located or other evidence, acceptable to the proper BLM office, of such instrument of recordation. It also includes an exact reproduction, duplicate or other acceptable evidence, except microfilm, of an amended instrument which may change or alter the description of the claim or site.

§ 3833.1 Recordation of mining claims.

§ 3833.1-1 Manner of recordation—National Park System units established before September 28, 1976.

Any unpatented mining claim, mill site or tunnel site in any National Park System unit in existence on September 28, 1976, which was not recorded on or before September 28, 1977, in accordance with the Notice of October 20, 1976 (41 FR 46357) or 36 CFR 9.5 is, pursuant to section 8 of the Act of September 28, 1976 (16 U.S.C. 1907), conclusively presumed to be abandoned and shall be void.

§ 3833.1-2 Manner of recordation—Federal lands.

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, excluding lands within units of the National Park System established before September 28, 1976, but including lands within a national monument administered by the United States Fish and Wildlife Service or the United States Forest Service, shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or certificate of location of the claim or site, a certificate of location containing the information in paragraph (c) of this section shall be filed. Where the claim so recorded lies within a unit of the National Park System, a copy of the documents filed shall be provided to the Superintendent of the appropriate unit by the Bureau of Land Management.

(b) The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site filed under state law or, if the state law does not require the recordation of a notice or certificate of location of the claim or

site, a certificate of location containing the information in paragraph (c) of this section. Where the claim so recorded lies within a unit of the National Park System, a copy of the documents filed shall be provided to the Superintendent of the appropriate unit by the Bureau of Land Management.

(c) The copy of the notice or certificates filed in accordance with paragraphs (a) and (b) of this section shall be supplemented by the following additional information unless it is included in the copy:

(1) The name or number of the claim or site, or both, if the claim or site has both;

(2) The name and current mailing address, if known, of the owner or owners of the claim or site;

(3) The type of claim or site;

(4) The date of location;

(5) For all claims or sites located on surveyed or unsurveyed lands, a description shall be furnished. This description shall recite, to the extent possible, the section(s), the approximate location of all or any part of the claim or site to within a 160 acre quadrant of the section (quarter section) or sections, if more than one is involved. In addition, there must be furnished the township, range, meridian and State obtained from an official survey plat or other U.S. Government map showing either the surveyed or protracted U.S. Government grid, whichever is applicable;

(6) For all claims or sites located on surveyed or unsurveyed land, either a topographic map published by the U.S. Geological Survey on which there shall be depicted the location of the claim or site, or a narrative or sketch describing the claim or site with reference by appropriate tie to some topographic, hydrographic or man-made feature. Such map, narrative description or sketch shall set forth the boundaries and positions of the individual claim or site with such accuracy as will permit the authorized officer of the agency administering the lands or the mineral interests in such lands to identify and locate the claim on the ground. More than one claim or site may be shown on a single map or described in a single narrative or sketch if they are located in the same general area, so long as the individual claims or sites are clearly identified; and

(7) In place of the requirements of (5) and (6) above, an approved mineral survey may be supplied.

(8) Nothing in the requirements for a map and description found in this section shall require the owner of a claim or site to employ a professional surveyor or engineer.

(d) Each claim or site filed shall be accompanied by a one time $5 service fee which is not returnable. A notice or certificate of location shall not be accepted if it is not accompanied by the service fee and shall be returned to the owner.

§ 3833.1-3 When recordation not required.

If the owner of an unpatented mining claim or mill site had on file in the proper BLM office on October 21, 1976, an application for a mineral patent which contains the documents and information required in § 3833.1-2 of this title, except if the application is for a patent for a placer claim which is located on surveyed lands and conforms to legal subdivisions, such applicant need not comply with the requirements of § 3833.1-2(c)(6) of this title, or if the owner of an unpatented mining claim or mill site located on or before October 21, 1976, files in the proper BLM office an application for a mineral patent, as described above, on or before October 22, 1979, the filing of the application shall be deemed full compliance with the recordation requirements of section 314(b) of the Act and the owner of that claim or site shall be exempt from the filing requirements of § 3833.1. For purposes of complying with the requirement of § 3833.2-1(a) of this title, upon notification to the claimant, the date of recordation in the proper BLM office shall be October 21, 1976, for claims and sites included in mineral patent applications on file as of that date. The date on which the application was actually filed shall be the date of recordation for all other claims and sites.

§ 3833.2 Evidence of assessment work-notice of intention to hold a claim or site.

§ 3833.2-1 When filing required.

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, which ever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

(b) The owner of an unpatented mining claim located within the boundaries of units of the National Park System must comply with the requirements of 35 CFR 9.5(d) for annual filing and copies of all those annual filings received by the National Park Service pursuant to that regulation will be given by the National Park Service to the proper BLM office. Compliance with the requirements of that regulation will be deemed full compliance with the requirements of section 314 of the Act for all owners of unpatented mining claims located in any unit of the National Park System.

(b)(1) Except as provided in (2) of this subsection, the owner of an unpatented mining claim, mill site or tunnel site located within any unit of the National Park System shall file before October 22, 1979, and on or before December 30 of each calendar year after the year of recording (See 36 CFR § 9.5), a notice of intention to hold the mining claim, mill site or tunnel site. Such notice shall be in the form prescribed by § 3833.2-3 of this title and shall be filed with the proper BLM office. A copy of each such filing shall be provided to the Superintendent of the appropriate unit by the Bureau of Land Management.

(2) Where a claimant has received a permit under 36 CFR § 9.5 to do assessment work on a claim in a unit of the National Park System, the claimant may file with the Bureau of Land Management in lieu of the notice required by (1) above, evidence of assessment work in the form prescribed in § 3833.2-2 of this title. A copy of such filing shall be provided to the Superintendent of the appropriate unit by the Bureau of Land Management.

(c) The owner of an unpatented mining claim located on Federal lands, excluding lands within a unit of the National Park System, but including lands within a national monument administered by the United States Fish and Wildlife Service or the United States Forest Service, after October 21, 1976, shall, on or before December 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim.

(d) The owner of a mill or tunnel site located on Federal lands, exluding lands within a unit of the National Park System but including lands within a national monument administered by the United States Fish and Wildlife Service or the United States Forest Service, shall file in the proper BLM office on or before December 30 of each year following the year of recording pursuant to § 3833.1-2 of this title, a notice of intention to hold the mill or tunnel site.

§ 3833.2-2 Form—evidence of assessment work.

Evidence of annual assessment work shall be in the form of either;

(a) An exact legible reproduction or duplicate, except microfilm, of the affidavit of assessment work performed which was or will be filed for record pursuant to section 314(a) of the Act in the local jurisdiction of the State where the claim or group of claims is located and recorded setting forth the following additional information:

(1) The serial number assigned to each claim by the authorized officer upon filing of the notice or certificate of location or patent application in the proper BLM office. Filing the serial number shall comply with the requirement in the act to file an additional description of the claim.

(2) Any change in the mailing address, if known, of the owner or owners of the claim or claims; or

(b) An exact legible reproduction or duplicate, except microfilm, of the detailed report concerning geological, geochemical and geophysical surveys provided for by the Act of September 2, 1958 (30 U.S.C. 28-1) and filed for record pursuant to section 314(a)(1) of the Act in the local jurisdiction of the State where the claim or group of claims is located and recorded setting forth the following additional information:

(1) The serial number assigned to each claim by the authorized officer upon filing in the proper BLM office of a copy of the official record of the notice or certificate of location or patent application; and

(2) Any change in the mailing address, if known, of the owner or owners of the claim.

§ 3833.2-3 Form—notice intention to hold claim or site.

(a) A notice of intention to hold a mining claim or group of mining claims shall be in the form of either (1) an exact legible reproduction or duplicate, except microfilm, of a letter signed by the owner of a claim or his agent filed for record pursuant to section 314(a)(1) of the Act in the local jurisdiction of the State where the claim is located and recorded setting forth the following information:

(i) The serial number assigned to each claim by the authorized officer upon filing in the proper BLM office of a copy of the notice or certificate of location. Filing the serial number shall comply with the requirement in the act to file an additional description of the claim;

(ii) Any change in the mailing address, if known, of the owner or owners of the claim;

(iii) A statement that the claim is held and claimed by the owner(s) for the valuable mineral contained therein;

(iv) A statement that the owner(s) intend to continue development of the claim; and

(v) The reason that the annual assessment work has not been performed or an affidavit of assessment work performed or a detailed report of geological, geochemical or geophysical survey under § 3833.2-2, has not been filed or

(2) The decision on file in the proper BLM office which granted a deferment of the annual assessment work required by 30 U.S.C. 28, so long as the decision is in effect on the date required for filing a notice of intention to hold a mining claim under § 3833.2-1 of this title or a petition for deferment, a copy of which has been recorded with the appropriate local office, which has not been acted on by the authorized officer.

(b) A notice of intention to hold a mill or tunnel site(s) shall be in the form of a letter signed by the owner or owners of such sites or their agent setting forth the following information:

(1) The serial number assigned to each site by the authorized officer upon filing in the proper BLM office of a copy of the official record of the notice or certificate of location;

(2) Any change in the mailing address, if known, of the owner or owners of the site(s); and

(3) In the case of a mill site, a statement that a claim-related site will continue to be used for mining or milling purposes or that an independent mill site will continue to be used for the purposes of a quartz mill or reduction works; or

(4) In the case of a tunnel site, a statement that the owner(s) will continue to prosecute work on the tunnel with reasonable diligence for the discovery or development of the vein or lode.

§ 3833.2-4 When evidence or notice not required.

Evidence of annual assessment work performed or a notice of intention to hold a mining claim need not be filed on unpatented mining claims or mill sites for which application for mineral patent which complies with 43 CFR Part 3860 has been filed and final certificate has been issued. (See 43 CFR 3851.5). The filing of an application and issuance of the final certificate will be deemed full compliance with the requirements of section 314(a) of the Act and the owner of that claim or site shall be exempt from the filing requirements of § 3833.2-1.

§ 3833.3 Notice of transfer of interest.

(a) Whenever the owner of an unpatented mining claim, mill site or tunnel site, which has been recorded in accordance with § 3833.1-2, sells, assigns, or otherwise conveys all or any part of his interest in the claim, his transferee shall file in the proper BLM office within 60 days after the completion of the transfer the following information:

(1) The serial number assigned to the claim by the authorized officer upon filing of a copy of the official record of the notice or certificate of location in the proper BLM office; and

(2) The name and mailing address of the person(s) to whom an interest in the claim has been sold, assigned, or otherwise transferred.

(b) Whenever any person acquires an interest through inheritance in an unpatented mining claim, mill site, or tunnel site recorded in accordance with § 3833.1, he shall file in the proper BLM office within 60 days after completion of the transfer the information required by paragraph (a) of this section.

§ 3833.4 Failure to file.

(a) The failure to file an instrument required by §§ 3833.1-2 (a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void.

(b) The fact that an instrument is filed in accordance with other laws permitting filing or recording thereof and is defective or not timely filed for record under those laws, or the fact that an instrument is filed for record under this subpart by or on behalf of some, but not all of the owners of the mining claim, mill site, or tunnel site, shall not be considered failure to file an instrument under this subpart.

§ 3833.5 Effect of recording and filing.

(a) Recordation or application involving an unpatented mining claim, mill site, or tunnel site by itself shall not render valid any claim which would not be otherwise valid under applicable law and does not give the owner any rights he is not otherwise entitled to by law.

(b) Nothing in this subpart shall be construed as a waiver of the assessment work requirements of section 2324 of the Revised Statutes, as amended (30 U.S.C. 28). Compliance with the requirements of this subpart shall be in addition to and not a substitute for compliance with the requirements of section 2324 of the Revised Statutes and with laws and regulations issued by any State or other authority relating to performance of annual assessment work.

(c) Filing of instruments pertaining to mining claims under other Federal law with the BLM or other Federal agency shall not excuse the filings required by this subpart and filings under this subpart shall not excuse the filing of instruments pertaining to mining claims under any other Federal law, except that filing a notice or certificate of location or an affidavit of annual assessment work under this subpart which is marked by the owner as also being filed under the Act of April 8, 1948 (62 Stat. 162) or the Act of August 11, 1955 (30 U.S.C. 621-625), will satisfy the recording requirement for O & C lands under 43 CFR subpart 3821 and Pub. L. 359 lands under 43 CFR Part 3730, or as provided in § 3833.2-1(b) of this title.

(d) In the case of any action or contest affecting an unpatented mining claim, mill or tunnel site, only those owners who have recorded their claim or site pursuant to § 3833.1-2 or filed a notice of transfer of interest pursuant to § 3833.3, shall be considered by the United States as parties whose rights are affected by such action or contest and shall be personally notified. All methods reasonably calculated to insure that those parties receive actual notice of the action or contest shall be employed. If those methods are not successful, the interested parties shall be notified by publication in accordance with 43 CFR 4.450. Owners who have not recorded a claim or site or filed a notice of transfer shall not be personally served and will be bound by any contest proceeding even though

they have not been personally served. This section applies to all unpatented mining claims, mill or tunnel sites located after October 21, 1976, and shall apply to such claims or sites located on or before October 21, 1976, only after they have been recorded pursuant to § 3833.1-2 of this title.

(e) Actual notice of an unpatented mining claim or mill or tunnel site by any employee or officer of the United States shall not exempt the claim or site from the requirements of this subpart.

(f) Failure of the government to notify an owner upon his filing or recording of a claim or site under this subpart that such claim or site is located on lands not subject to location or otherwise void for failure to comply with Federal or State law or regulations shall not prevent the government from later challenging the validity of or declaring void such claim or site in accordance with due process of law.

(g) Any person who files an instrument required by these regulations knowing the same to contain any false, fictitious or fraudulent statement or entry, may be subject to criminal penalties under 18 U.S.C. 1001.

These regulations were originally published January 27, 1977, in 42 F.R. 5298. Amendments were published February 14, 1979, in 44 F.R. 9720 and April 5, 1979, in 44 F.R. 20428.

☆GPO 1979—680-030/460

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8340

[Circular No. 2445]

Off-Road Vehicles, Use of Public Lands

Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Taylor Grazing Act (43 U.S.C. 315a), the Wild and Scenic Rivers Act (16 U.S.C. 1281c), the Endangered Species Act (16 U.S.C. 1531 et seq.), the Act of September 18, 1960, as amended (16 U.S.C. 670 et seq.), the Land and Water Conservation Fund Act (16 U.S.C. 4601-6a), the National Trails System Act (16 U.S.C. 1241 et seq.), and Executive Order 12044 (37 FR 2877, 3 CFR 2877), as amended by Executive Order 11989 (42 FR 26959) Part 8340, Group 8300, Subchapter H, Chapter II, Title 43 of the Code of Federal Regulations is revised as set forth below.

PART 8340—OFF-ROAD VEHICLES

Subpart 8340—General

Sec.
8340.0-1 Purpose.
8340.0-2 Objectives.
8340.0-3 Authority.
8340.0-5 Definitions.
8340.0-7 Penalties.
8340.0-8 Applicability.

Subpart 8341—Conditions of Use of Public Lands

8341.1 Regulations governing use.
8341.2 Special rules.

Subpart 8342—Areas and Trails Designation

8342.1 Designation criteria.
8342.2 Designation procedures.
8342.3 Designation changes.

Subpart 8343—Vehicle Operation

8343.1 Standards.

Subpart 8344—Permits

8344.1 Permit requirements.

Authority: 43 U.S.C. 1201, 43 U.S.C. 315a, 16 U.S.C. 1531 et seq., 16 U.S.C. 1281c, 16 U.S.C. 670 et seq., 16 U.S.C. 460 1-6a, 16 U.S.C. 1241 et seq., and 43 U.S.C. 1701 et seq.

Subpart 8340—General

§ 8340.0-1 Purpose.

The purpose of this part is to establish criteria for designating public lands as open, limited or closed to the use of off-road vehicles and for establishing controls governing the use and operation of off-road vehicles in such areas.

§ 8340.0-2 Objectives.

Theobjectives of these regulations are to protect the resources of the public lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.

§ 8340.0-3 Authority.

The provisions of this part are issued under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); the Taylor Grazing Act (43 U.S.C. 315a); the Endangered Species Act (16 U.S.C. 1531 et seq.); the Wild and Scenic Rivers Act (16 U.S.C. 1281c); the act of September 15, 1960, as amended (16 U.S.C. 670 et seq.); the Land and Water Conservation Fund Act (16 U.S.C. 460 1-6a); the National Trails System Act (16 U.S.C. 1241 et seq.) and E.O. 11644 (Use of Off-Road Vehicles on the Public Lands), 37 FR 2877, 3 CFR 74, 332, as amended by E.O. 11989 42 FR 26959 (May 25, 1977).

§ 8340.0-5 Definitions.

As used in this part:

(a) "Off-Road Vehicle" means any motorized vehicle capable of, or designed for, travel on or immediately over land, water, or other natural terrain, excluding: (1) any nonamphibious registered motorboat; (2) any military, fire, emergency, or law enforcement vehicle while being used for emergency purposes; (3) any vehicle whose use is expressly authorized by the authorized officer, or otherwise officially approved; (4) Vehicles in official use; and (5) any combat or combat support vehicle when used in times of national defense emergencies.

(b) "Public Lands" means any lands the surface of which is administered by the Bureau of Land Management.

(c) "Bureau" means the Bureau of Land Management.

(d) "Official Use" means use by an employee, agent, or designated representative of the Federal Government or one of its contractors, in the course of his employment, agency, or representation.

(e) "Planning System" means the approach provided in Bureau regulations, directives and manuals to formulate multiple use plans for the public lands. This approach provides for public participation within the system.

(f) "Open areas and trails" are designated areas and trails where off-road vehicles may be operated subject to the operating regulations and vehicle

Published 44 F.R. 34834, June 15, 1979 - Effective July 16, 1979

Circular Distribution List

standards set forth at Subparts 8341 and 8343 of this part.

(g) "Limited areas and trails" are designated areas and trails where the use of off-road vehicles is subject to restrictions deemed appropriate by the authorized officer. Restrictions may limit the number or types of vehicles allowed, dates and times of use, and similar matters. Limited areas and trails may be designated for special or intensive use, including, but not limited to, organized events, and may be subject to but not limited to, rules set forth at Subpart 8341.2.

(h) "Closed areas and trails" are designated areas and trails where the use of off-road vehicles is permanently or temporarily prohibited.

(i) "Spark Arrester" is any device which traps or destroys 80 percent or more of the exhaust particles to which it is subjected.

§ 8340.0-7 Penalties.

Any person who violates or fails to comply with the regulations of Subparts 8341 and 8343 is subject to arrest, conviction, and punishment pursuant to appropriate laws and regulations. Such punishment may be a fine of not more than $1,000 or imprisonment for not longer than 12 months, or both.

§ 8340.0-8 Applicability.

The regulations in this part apply to all public lands, roads, and trails under administration of the Bureau.

Subpart 8341—Conditions of Use

§ 8341.1 Regulations governing use.

(a) The operation of off-road vehicles is permitted on those areas and trails designated as open to off-road vehicle use.

(b) Any person operating an off-road vehicle on those areas and trails designated as limited shall conform to all terms and conditions of the applicable designation orders.

(c) The operation of off-road vehicles is prohibited on those areas and trails closed to off-road vehicle use.

(d) It is prohibited to operate an off-road vehicle in violation of State laws and regulations relating to use standards, registration, operation, and inspection of off-road vehicles. To the extent that State laws and regulations do not exist or are less stringent than the regulations in this part, the regulations in this part are minimum standards and are controlling.

(e) No person may operate an off-road vehicle on public lands without a valid State operator's license or learner's permit. Exceptions are: (1) A person under the direct supervision of an individual 18 years of age or older who has a valid operator's license and who is responsible for the acts of the person supervised. (2) A person certified by State government as competent to drive off-road vehicles after successfully completing a State approved operator's training program. (3) Operation of an off-road vehicle in areas of Alaska designated by the Bureau's State Director for Alaska.

(f) Any person supervising a nonlicensed driver shall be responsible for the operation of the vehicle and shall be responsible for the actions of the driver.

(g) No person shall operate an off-road vehicle on public lands:

(1) In a reckless, careless, or negligent manner;

(2) In excess of established speed limits;

(3) While under the influence of alcohol, narcotics, or dangerous drugs;

(4) In a manner causing, or likely to cause significant, undue damage to or disturbance of the soil, wildlife, wildlife habitat, improvements, cultural, or vegetative resources or other authorized uses of the public lands; and

(5) During night hours, from a half-hour after sunset to a half-hour before sunrise, without lighted headlights and taillights.

(h) Drivers of off-road vehicles shall yield the right-of-way to pedestrians, saddle horses, pack trains, and animal-drawn vehicles.

(i) Any person who operates an off-road vehicle on public lands must comply with the regulations in this part, and in § 8341.2 as applicable, while operating such vehicle on public lands.

§ 8341.2 Special rules.

(a) Notwithstanding the consultation provisions in § 8342.2(a), where the authorized officer determines that off-road vehicles are causing or will cause considerable adverse effects upon soil, vegetation, wildlife, wildlife habitat, cultural resources, historical resources, threatened or endangered species, wilderness suitability, other authorized uses, or other resources, the authorized officer shall immediately close the areas or trails affected to the type(s) of vehicle causing the adverse effect until the adverse effects are eliminated and measures implemented to prevent recurrence. Such closures will not prevent designation in accordance with procedures in part 8342 of this subpart, but these lands shall not be opened to the type(s) of off-road vehicle to which it was closed unless the authorized officer determines that the adverse effects have been eliminated and measures implemented to prevent recurrence.

(b) Each State director is authorized to close portions of the public lands to use by off-road vehicles, except those areas or trails which are suitable and specifically designated as open to such use pursuant to Subpart 8342 of this part.

Subpart 8342—Designation of Areas and Trails

§ 8342.1 Criteria.

The authorized officer shall designate all public lands as either open, limited, or closed to off-road vehicles. All designations shall be based on the protection of the resources of the public lands, the promotion of the safety of all the users of the public lands, and the minimization of conflicts among various uses of the public lands; and in accordance with the following criteria:

(a) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, air, or other resources of the public lands, and to prevent impairment of wilderness suitability.

(b) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats. Special attention will be given to protect endangered or threatened species and their habitats.

(c) Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.

(d) Areas and trails shall not be located in officially designated wilderness areas or primitive areas. Areas and trails shall be located in natural areas only if the authorized officer determines that off-road vehicle use in such locations will not adversely affect their natural, esthetic, scenic, or other values for which such areas are established.

§ 8342.2 Designation procedures.

(a) *Public participation.* The authorized officer shall, to the extent practical, designate and redesignate areas and trails in conjunction with the Bureau planning system for the formulation of multiple-use management plans. Plans shall consider current and potential impacts of specific vehicle types on all resources and users in the region of the area under consideration. Prior to making designations or redesignations, the authorized officer

shall consult with interested user groups. Federal, State, county, and local agencies, local landowners, and other parties in a manner that provides an opportunity for the public to express itself and have those views taken into account.

(b) *Identification of designated areas and trails.* The authorized officer shall, after designation, take action by marking and other appropriate measures to identify designated areas and trails so that the public will be aware of locations and limitations applicable thereto. Public notice of designations or redesignations shall be given at the time of designation or redesignation through publication in the **Federal Register** and local news media. Copies of such notices shall be available to the public in local Bureau offices. The authorized officer will make available to the public appropriate informational material, including maps.

§ 8342.3 Designation changes.

Monitoring use. The authorized officer shall monitor effects of the use of off-road vehicles. On the basis of information so obtained, and whenever the authorized officer deems it necessary to carry out the objectives of this part, designations may be amended, revised, revoked, or other actions taken pursuant to the regulations in this part.

Subpart 8343—Vehicle Operations

§ 8343.1 Standards.

(a) No off-road vehicle may be operated on public lands unless equipped with brakes in good working condition.

(b) No off-road vehicle equipped with a muffler cutout, bypass, or similar device, or producing excessive noise exceeding Environmental Protection Agency standards, when established, may be operated on public lands.

(c) By posting appropriate signs or by marking a map which shall be available for public inspection at local Bureau offices, the authorized officer may indicate those public lands upon which no off-road vehicle may be operated unless equipped with a properly installed spark arrester. The spark arrester must meet either the U.S. Department of Agriculture—Forest Service Standard 5100–1a, or the 80-percent efficiency level standard when determined by the appropriate Society of Automotive Engineers (SAE) Recommended Practices J335 or J350. These standards include, among others, the requirements that: (1) the spark arrester shall have an efficiency to retain or destroy at least 80 percent of carbon particles for all flow rates, and (2) the spark arrester has been warranted by its manufacturer as meeting this efficiency requirement for at least 1,000 hours subject to normal use, with maintenance and mounting in accordance with the manufacturer's recommendation. A spark arrester is not required when an off-road vehicle is being operated in an area which has 3 or more inches of snow on the ground.

(d) Vehicles operating during night hours, from a half-hour after sunset to a half-hour before sunrise, shall comply with the following: (1) Headlights shall be of sufficient power to illuminate an object at 300 feet at night under normal, clear atmospheric conditions. Two- or three-wheeled vehicles or single-tracked vehicles will have a minimum of one headlight. Vehicles having four or more wheels or more than a single track will have a minimum of two headlights, except double tracked snowmachines with a maximum capacity of two people may have only one headlight. (2) Red taillights, capable of being seen at a distance of 500 feet from the rear at night under normal, clear atmospheric conditions, are required on vehicles in the same numbers as headlights.

Subpart 8344—Permits

§ 8344.1 Permit requirements.

Permits are required for certain types of ORV use and shall be issued in accordance with the special recreation permit procedures under part 8372 of this chapter.

Guy R. Martin,
Assistant Secretary of the Interior.
June 4, 1979.

[FR Doc. 79-18543 Filed 6-14-79; 8:45 am]

GPO 851-671

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER D—RANGE MANAGEMENT (4000)

[Circular No. 2440]

PART 4100—GRAZING ADMINISTRATION

Authorizing Grazing Use—Payment of Fees

Under the authority of the Taylor Grazing Act of 1934 as amended (43 U.S.C. 315); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1751); and the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901), § 4130.5-1, Subpart 4130, Part 4100, Subchapter D, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

§ 4130.5-1 Payment of fees.

(a) Grazing fees shall be established annually by the Secretary based upon the grazing fee formula in the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901).

$$\text{Economic Value (Grazing Fee)} = \$1.23 \frac{[FVI + (BCPI - PPI)]}{100}$$

The components of the formula are:

$1.23 = fair market value for base period 1964-1968.
FVI = Forage Value Index
BCPI = Beef Cattle Price Index
PPI = Prices Paid Index

Grazing fees shall be adjusted annually to the computed economic value; subject only to the provision that adjustments, either increases or decreases, shall not be more than 25 percent of the previous year's grazing fee.

GARY J. WICKS,
Acting Assistant Secretary of the Interior.

JANUARY 4, 1979.

[FR Doc. 79-843 Filed 1-9-79; 8:45 am]

Published 44 F.R. 2172, January 10, 1979 - Effective March 1, 1979

Circular Distribution List

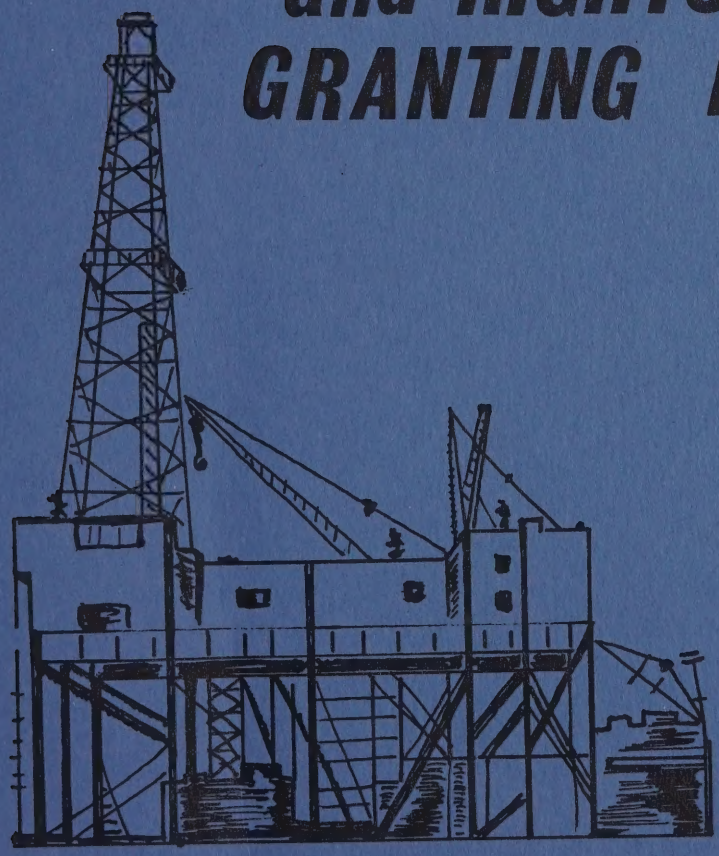
LEGAL LIBRARY

Circular No. 2446

REGULATIONS PERTAINING TO:

OUTER CONTINENTAL SHELF MINERALS LEASING and RIGHTS-OF-WAY GRANTING PROGRAMS

43 CFR 3300



U.S. Department of the Interior
Bureau of Land Management

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
1979 DEC 13 AM 10:00
RECEIVED
MONTANA STATE OFFICE
BILLINGS, MONTANA

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2880 and 3300

[Circular No. 2446]

Outer Continental Shelf Minerals Leasing and Rights-of-Way Granting Programs

Under the authority of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.), Part 3300, Group 3300, Subchapter C, and Part 2880, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations are amended as set forth below.

PART 2880 [Amended]

1. Part 2880 is amended by the deletion of subpart 2883.

2. Part 3300 is revised to read as follows:

Group 3300—Outer Continental Shelf Minerals and Rights-of-way Management

PART 3300—OUTER CONTINENTAL SHELF MINERALS AND RIGHTS-OF-WAY MANAGEMENT, GENERAL

Subpart 3300—Outer Continental Shelf Minerals and Rights-of-way Management, General.

Sec.
3300.0–1 Purpose.
3300.0–2 Policy.
3300.0–3 Authority.
3300.0–5 Definitions.
3300.0–6 Cross references.
3300.1 Leasing maps and diagrams.
3300.2 Information to States.
3300.3 Helium.
3300.4 Payment.

Subpart 3310—Leasing Program

3310.0–5 Definitions.
3310.1 Receipt and consideration of nominations; public notice and participation.
3310.2 Review by State and local governments.
3310.3 Periodic consultation with interested parties.
3310.4 Consideration of Coastal Zone Management programs.

Subpart 3312—Reports From Federal Agencies

3312.1 General.

Subpart 3313—Call for Nominations and Comments

3313.1 Nominations of tracts.
3313.2 Tracts near Coastal States.

Subpart 3314—Tentative Tract Selection

3314.1 General.
3314.2 Tract size.

Subpart 3315—Lease Sales

3315.1 Proposed Notice of Sale.
3315.2 State comments.
3315.3 Department of Energy review.
3315.4 Notice of sale.

Subpart 3316—Issuance of Leases

3316.1 Qualifications of lessees.
3316.2 Lease term.
3316.3 Joint bidding provisions.
3316.3–1 Definitions.
3316.3–2 Joint bidding requirements.
3316.3–3 Chargeability for production.
3316.3–4 Bids disqualified.
3316.4 Submission of bids.
3316.5 Award of leases.
3316.6 Lease form.
3316.7 Dating of leases.

Subpart 3317—Rentals and Royalties

3317.1 Rentals.
3317.2 Royalties.
3317.3 Minimum royalty.
3317.4 Effect of suspensions on royalty and rental.

Subpart 3318—Bonding

3318.1 Acceptable bonds.
3318.2 Form of bond.
3318.3 Additional bonds.

Subpart 3319—Assignments, Transfers, and Extensions

3319.1 Assignments of leases or interests in leases.
3319.2 Requirements for filing of transfers.
3319.3 Attorney General review.
3319.4 Separate filings for assignments.
3319.5 Effect of assignment of a particular tract.
3319.6 Extension of lease by drilling or well reworking operations.
3319.7 Directional drilling.
3319.8 Compensatory payments as production.
3319.9 Effect of suspension on lease term.

Subpart 3320—Termination of Leases

3320.1 Relinquishment of leases or parts of leases.
3320.2 Cancellation of leases.

Subpart 3321—Section 6 Leases

3321.1 Effect of regulations on leases.
3321.2 Leases of other minerals.

Subpart 3331—Studies

Sec.
3331.1 Environmental studies.

Subpart 3340—Grants of Pipeline Rights-of-way on the Outer Continental Shelf

3340.0–1 Purpose.
3340.0–2 Policy.
3340.0–5 Definitions.
3340.1 Nature of grant.
3340.2 Application procedures.
3340.2–1 Applications.
3340.2–2 Approval action.
3340.3 Construction.
3340.4 Assignment of right-of-way.
3340.5 Relinquishment of right-of-way.
3340.6 Change of use or flow.
3340.7 Bonding.

Appendix A—Suggested Bid Form.
Appendix B—Required Joint Bidder's Statement.

Authority: 43 U.S.C. 1331 et seq.

Subpart 3300—Outer Continental Shelf Mineral and Rights-of-way Management, General

§ 3300.0–1 Purpose.

The purpose of these regulations is to establish the procedures under which the Secretary of the Interior will exercise the authority granted to administer a leasing program for minerals and grant rights-of-way on the submerged lands of the Outer Continental Shelf.

Published in 44 F.R. 38268, June 29, 1979 - Corrected by publication in 44 F.R. 55380 September 26, 1979 - Effective Date September 26, 1979

Circular Distribution List

§ 3300.0–2 Policy.

The management of Outer Continental Shelf resources is to be conducted in accordance with the findings, purposes and policy directions provided by the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1332, 1801, 1802), and other Executive, legislative judicial and Departmental guidance. The Secretary of the Interior shall consider available environmental information in making decisions affecting Outer Continental Shelf resources.

§ 3300.0–3 Authority.

The Outer Continental Shelf Lands Act as amended, (43 U.S.C. § 1331 et seq.) authorizes the Secretary of the Interior to issue, on a competitive basis, leases for oil and gas, sulphur, geopressured-geothermal and associated resources, and other minerals in submerged lands of the Outer Continental Shelf. The act authorizes the Secretary of the Interior to grant rights-of-way through the submerged lands of the Outer Continental Shelf. The Energy Policy and Conservation Act of 1975 (42 U.S.C. 6213), prohibits joint bidding by major oil and gas producers.

§ 3300.0–5 Definitions.

As used in this part, the term:

(a) "Act" refers to the Outer Continental Shelf Lands Act of August 7, 1953 (43 U.S.C. 1331 et seq.) as amended.

(b) "Director" means the Director, Bureau of Land Management.

(c) "OCS" means the Outer Continental Shelf, as that term is defined in 43 U.S.C. 1331(a).

(d) "Secretary" means the Secretary of the Interior.

(e) "Bureau" means the Bureau of Land Management.

(f) "Coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States, and includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches, which zone extends seaward to the outer limit of the United States territorial sea and extends inland from the shore lines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, pursuant to the authority of section 305(b)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1454(b)(1));

(g) "Affected State" means, with respect to any program, plan, lease sale, or other activity, proposed, conducted, or approved pursuant to the provisions of the act, any State—

(1) the laws of which are declared, pursuant to section 4(a)(2) of the act, to be the law of the United States for the portion of the Outer Continental Shelf on which such activity is, or is proposed to be conducted;

(2) which is, or is proposed to be, directly connected by transportation facilities to any artificial island or structure referred to in section 4(a)(1) of the act;

(3) which is receiving, or in accordance with the proposed activity will receive, oil for processing, refining, or transshipment which was extracted from the Outer Continental Shelf and transported directly to such State by means of vessels or by a combination of means including vessels;

(4) which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the Outer Continental Shelf; or

(5) in which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine or coastal environment in the event of any oilspill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities;

(h) "Marine environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, conditions, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the Outer Continental Shelf;

(i) "Coastal environment" means the physical atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, conditions, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone;

(j) "Human environment" means the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the Outer Continental Shelf;

(k) "Mineral" includes oil, gas, sulphur, geopressured-geothermal and associated resources, and such other minerals as are disposable under mineral laws applicable to the public lands.

(l) "Authorized officer" means any person authorized by law or by delegation of authority to or within the Bureau of Land Management to perform the duties described in this part.

§ 3300.0–6 Cross references.

(a) For Geological Survey regulations governing exploration, development and production on leases, see 30 CFR 250 et seq.

(b) For multiple use conflicts see the Environmental Protection Agency listing of ocean dumping sites—40 CFR 228.

(c) For related National Oceanic and Atmospheric Administration programs see:

(1) Marine sanctuary regulations, 15 CFR 922;

(2) Fishermen's Contingency Fund, 50 CFR 296;

(3) Coastal Energy Impact Program, 15 CFR 931;

(d) For Federal Maritime Commission regulations on the oil spill liability of vessels, see 46 CFR 544.

(e) For Coast Guard regulations on oil spill liability of operators, see 33 CFR 135–6.

(f) For Coast Guard regulations on port access routes, see 33 CFR 164.

(g) For compliance with the National Environmental Policy Act, see 40 CFR 1500–08.

(h) For Department of Transportation regulations on offshore pipeline facilities, see 49 CFR 195.

(i) For Department of Defense regulations on military activities on offshore areas, see 32 CFR 252.

§ 3300.1 Leasing maps and diagrams

(a) Any area of the OCS which has been appropriately platted as provided in paragraph (b) of this section, is subject to lease for any mineral not included in a subsisting lease issued under the act or meeting the requirements of subsection (a) of section 6 of the act. Before any lease is offered or issued an area may be (1) withdrawn from disposition pursuant to section 12(a) of the act, or (2) designated as an area or part of an area restricted from operation under section 12(d) of the act.

(b) The Bureau shall prepare leasing maps and official protraction diagrams of areas of the OCS. The areas included in each mineral lease shall be in accordance with the appropriate leasing map or official protraction diagram.

§ 3300.2 Information to States.

(a) The information covered in this subsection is prepared by or directly obtained by the Director. Such information is typically not considered to be proprietary or privileged, with the primary exception of specific tract nominations by industry received in response to a Call for Nominations and Comments issued by the Secretary. All other proprietary and privileged information is obtained by or under the

control of the U.S. Geological Survey which is responsible for its release in accordance with its regulations (see 30 CFR 250, 251, 252).

(b) The Director, in conjunction with the Director, U.S. Geological Survey, shall prepare an index to OCS information (see 30 CFR 252.5). The index shall list all relevant actual or proposed programs, plans, reports, environmental impact statements, nominations information, environmental study reports, lease sale information and any similar type of relevant information including, modifications, comments and revisions. prepared by or directly obtained by the Director under the act. The index shall be sent on a regular basis to affected States and, upon request, it shall be sent to any affected local government. The public shall be informed of the availability of the index.

(c) Upon request, the Director shall transmit to affected States, local governments or the public, a copy of any information listed in the index which is subject to the control of the Bureau in accordance with the requirements and subject to the limitations of the Freedom of Information Act (5 U.S.C. 552) and regulations implementing said Act, and the regulations contained in 43 CFR Part 2, except as provided in (d) below.

(d) Upon request, the Director shall provide relative indications of interest in tracts nominated as well as any comments filed in response to a Call for Nominations and Comments for a proposed sale. However, no information transmitted shall identify any particular tract with the name of any particular party so as not to compromise the competitive position of any participants in the nominating process.

§ 3300.3 Helium.

(a) Each lease issued or continued under these regulations shall be subject to a reservation by the United States, under section 12(f) of the act, of the ownership of and the right to extract helium from all gas produced from the leased area.

(b) In case the United States elects to take the helium, the lessee shall deliver all gas containing helium, or the portion of gas desired, to the United States at any point on the leased area or at an onshore processing facility. Delivery shall be made in the manner required by the United States to such plants or reduction works as the United States may provide.

(c) The extraction of helium shall not cause a reduction in the value of the lessee's gas or any other loss for which he is not reasonably compensated, except for the value of the helium extracted. The United States shall determine the amount of reasonable compensation. The United States shall have the right to erect, maintain and operate on the leased area any and all reduction works and other equipment necessary for the extraction of helium. The extraction of helium shall not cause substantial delays in the delivery of natural gas produced to the purchaser of that gas.

§ 3300.4 Payment.

(a) Payments of bonuses, including deferred bonuses, first year's rental, other payments due upon lease issuance, filing charges and fees, annual rentals and costs for grants of pipeline rights-of-way shall be made to the manager of the appropriate OCS field office. All payments shall be made by cash, check or bank draft payable to the Bureau of Land Management, unless otherwise directed by the Secretary.

(b) All other payments required by a lease or the regulations in this part shall be payable to the United States Geological Survey.

Subpart 3310—Leasing Program

§ 3310.0–5 Definitions.

As used in this subpart, the term—"Affected State" and "affected States" means Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, California, Oregon, Washington, and Alaska.

§ 3310.1 Receipt and consideration of nominations; public notice and participation.

(a) During preparation of a proposed 5-year leasing program, the Secretary shall invite and consider suggestions and relevant information for such program from Governors of affected States, local government, industry, other Federal agencies, including the Attorney General in consultation with the Federal Trade Commission, and all interested parties, including the general public. This request for information shall be issued as a notice in the Federal Register. Local governments wishing to respond to such request shall first submit their responses to the Governor of the State in which the local government is located.

(b) The Secretary shall send letters to the Governors of the affected States requesting them to identify specific laws, goals, and policies which they believe should be considered by the Secretary in connection with the leasing program. The Secretary shall also request from the Secretary of Energy information on regional and national energy markets, on OCS production goals and on transportation networks.

§ 3310.2 Review by State and local governments.

(a)(1) The Secretary shall prepare a proposed leasing program. At least 60 days prior to publication of the proposed program in the Federal Register, a copy of the draft of the proposed program shall be forwarded to the Governor of each affected State for comment. The Governor may solicit comments from local governments in his or her State which the Governor determines will be affected by the proposed program.

(2) The Secretary shall reply in writing to any comment on the draft of the proposed program from the Governor of an affected State which is received at least 15 days prior to the submission of the proposed program to the Congress and publication in the Federal Register. All such correspondence between the Secretary and Governor of such State shall accompany the proposed program when it is submitted to the Congress.

(b) The proposed leasing program shall be submitted to the Governors of the affected States for review and comment at the time it is submitted to the Congress and the Attorney General and published in the Federal Register. The Governor of an affected State shall, upon request from any local government affected by the program, submit a copy of the proposed program to such local government. Comments and recommendations on any aspect of the proposed program may be submitted by a State or local government to the Secretary within 90 days after the date of its publication in the Federal Register. Comments and recommendations from local governments shall be submitted first to the Governor of the State in which the local government is located.

(c) At least 60 days prior to approving the final leasing program and any later significant revision, the Secretary shall submit it to the President and the Congress, together with any comments. The Secretary shall indicate in such submission why any specific recommendation of the Attorney General or of a State or local government was not accepted.

§ 3310.3 Periodic consultation with interested parties.

The Secretary shall provide for periodic consultation with State and local governments, existing and potential oil and gas lessees and permittees, and representatives of other individuals or organizations engaged in any activity in or on the OCS, including those involved in fish and shellfish recovery, and recreational activities. This consultation shall take place primarily through appropriate public notice as described in §§ 3310.1 and 3310.2 and through the OCS Advisory Board and its committees, on a regional and national basis. Meetings of the OCS Advisory Board shall be held on specific

issues as required by the Board's charter.

§ 3310.4 Consideration of coastal zone management program.

In the development of the leasing program, consideration shall be given to the coastal zone management program being developed or administered by an affected coastal State under section 305 or 306 of the Coastal Zone Management Act of 1972 as amended, (16 U.S.C. 1454, 1455). Information concerning the relationship between a State's coastal zone management program and OCS oil and gas activity shall be requested from the Governors of the affected coastal States and from the Secretary of Commerce prior to the development of the proposed leasing program at the time information is requested under § 3310.1 of this title.

Subpart 3312—Reports From Federal Agencies

§ 3312.1 General.

For oil and gas lease sales shown in an approved leasing schedule and as the need arises for other mineral leasing, the Director shall request the Director, Geological Survey, to prepare a report describing the general geology and potential mineral resources of the area under consideration. The Director shall request other interested Federal agencies to prepare reports describing, to the extent known, any other valuable resources contained within the general area and the potential effect of mineral operations upon the resources or upon the total environment or other uses of the area.

Subpart 3313—Call for Nominations and Comments

§ 3313.1 Nominations of tracts.

(a) The Director may receive and consider tract nominations or requests describing areas and expressing an interest in leasing of minerals.

(b) In accordance with an approved program and schedule for the leasing of lands which may contain oil and gas, the Director shall issue Calls for Nominations and Comments on tracts for the leasing of such minerals in specified areas. The Call for Nominations and Comments shall be published in the Federal Register and may be published in other publications as desirable. Nominations and comments on tracts shall be addressed to the manager of the appropriate OCS office, with copies to the Director and to the Director and the Regional Conservation manager of the Geological Survey. The Director shall also request comments on tracts which should receive special concern and analysis. For an oil and gas lease sale call area, the Director may request comments concerning geological conditions, including bottom hazards; archaeological or cultural sites on the seabed or nearshore; multiple uses of the proposed leasing area, including navigation, recreation and fisheries; and other socioeconomic, biological and environmental information.

§ 3313.2 Tracts near Coastal States.

(a) At the time nominations are solicited for leasing of tracts within 3 geographical miles of the seaward boundary of any coastal State, the Secretary shall provide the Governor of that State information required under section 8(g)(1) of the act. The Director shall furnish information identifying the areas for leasing as well as all relevant available environmental data for such areas (see 30 CFR 251.14).

(b) After receipt of nominations for tracts within the area described in (a) hereof, the Secretary shall inform the Governor of those tracts that are to be given further consideration for leasing. The Secretary shall enter into consultation with the Governor to determine whether the area may contain oil or gas pools or fields underlying both the OCS and lands subject to the jurisdiction of the State.

(c) After selection for leasing of those tracts which may have oil or gas pools or fields underlying both the OCS and lands under State jurisdiction, the Secretary shall offer the Governor an opportunity to enter into an agreement for the equitable disposition of revenues from such tracts under section 8(g)(2) of the act.

(d) If no agreement can be reached within 90 days of the Secretary's offer, the tracts may be leased and all revenues deposited in a separate Treasury account pending equitable disposition of the revenues under sections 8(g) (3) and (4) of the act.

Subpart 3314—Tentative Tract Selection

§ 3314.1 General.

(a) The Director, in consultation with the Director, Geological Survey and other appropriate Federal agencies, shall recommend to the Secretary tracts for further environmental analysis and consideration for leasing. The Director, on his or her own motion, in consultation with the Director, Geological Survey, may include in the recommendation tracts which have not been nominated. In making a recommendation, the Director shall consider all available environmental information, multiple-use conflicts, resource potential, industry interest and other relevant information. Comments received from States and local governments and interested parties in response to Calls for Nominations and Comments shall be considered in making recommendations.

(b) After tracts have been tentatively selected, the Director shall evaluate fully the potential effect of leasing on the human, marine and coastal environments, and develop measures to mitigate adverse impacts, including lease stipulations. The views and recommendations of Federal agencies, State agencies, local governments, organizations, industries, and the general public shall be utilized, as appropriate. The Director may hold public hearings on the environmental analysis after appropriate notice.

(c) In general, the Director shall seek to inform the public as soon as possible of tract additions or deletions that occur after the tentative selection of tracts.

§ 3314.2 Tract size.

A tract selected for leasing shall consist of a compact area not exceeding 5760 acres, unless the authorized officer finds that a larger area is necessary to comprise a reasonable economic production unit.

Subpart 3315—Lease Sales

§ 3315.1 Proposed Notice of Sale.

(a) The Director shall in consultation with appropriate Federal agencies develop measures, including lease stipulations and conditions, to mitigate adverse impacts on the environments. For oil and gas lease sales, appropriate proposed stipulations and conditions shall be contained in the proposed notice of lease sale.

(b) A proposed notice of lease sale shall be submitted to the Secretary for approval. All comments and recommendations received and the Director's findings or actions thereon, shall also be forwarded to the Secretary.

(c) Upon approval by the Secretary, the proposed Notice of Sale shall be sent to the Governor of any affected State and be published in the Federal Register.

§ 3315.2 State comments.

(a) Within 60 days after notice of a proposed lease sale, a Governor of any affected State or any affected local government in such State may submit recommendations to the Secretary regarding the size, timing or location of

the proposed lease sale. Prior to submitting recommendations to the Secretary, any affected local government shall forward such recommendation to the Governor.

(b) The Secretary shall accept such recommendations of the Governor and may accept recommendations of any affected local government if he determines, after having provided the opportunity for consultation, that they provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State. A determination of the national interest shall be based on the findings, purposes and policies of the act.

(c) The Secretary shall communicate to the Governor, in writing, the reasons for his determination to accept or reject such Governor's recommendations, or to implement any alternative means identified in consultation with the Governor to provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State.

§ 3315.3 Department of Energy review.

The Secretary shall allow 30 days for review of the lease terms and conditions by the Secretary of Energy, unless there is an agreement that a shorter period provides a reasonable opportunity for review.

§ 3315.4 Notice of sale.

(a) Upon approval of the Secretary, the Director shall publish the notice of lease sale in the **Federal Register** as the official publication, and may publish the notice in other publications. The publication in the **Federal Register** shall be at least 30 days prior to the date of the sale. The notice shall state the place and time at which bids shall be filed, and the place, date and hour at which bids shall be opened. The notice shall contain a description of the areas to be offered for lease and any stipulations, terms and conditions of the sale.

(b) Tracts shall be offered for lease by competitive sealed bidding under conditions specified in the notice of lease sale and in accordance with all applicable laws and regulations. Suggested formats for bidder submissions and joint bidder's statements appear in Appendix A and B of this part.

(c) The notice of lease sale shall contain a reference to the OCS lease form which shall be issued to successful bidders.

(d) With the approval of the Secretary, the Director may defer any part of the payment of the cash bonus according to a schedule announced at the time of the notice of lease sale. Payment shall be made no later than 5 years after the date of the lease sale. The schedule shall contain provisions for guaranteed payment of a deferred bonus.

(e) In order to obtain statistical information to determine which bidding alternatives best accomplish the purposes and policies of the act, the Director may, until September 18, 1983, require each bidder to submit bids for any OCS area in accordance with more than one of the bidding systems described in section 8(a)(1) of the act. No more than 10 percent of the tracts offered each year shall contain such a requirement. Leases may be awarded using a bidding alternative selected at random for statistical purposes, if it is otherwise consistent with the purposes and policies of the act.

Subpart 3316—Issuance of Leases

§ 3316.1 Qualifications of lessees.

(a) In accordance with section 8 of the act, leases shall be awarded only to the highest responsible qualified bidder.

(b) Mineral leases issued pursuant to section 8 of the act may be held only by: (1) citizens and nationals of the United States, (2) aliens lawfully admitted for permanent residence in the United States as defined in 8 U.S.C. 1101(a)(20); (3) private, public or municipal corporations organized under the laws of the United States or of any State or of the District of Columbia or territory thereof, or (4) associations of such citizens, nationals, resident aliens, or private, public, or municipal corporations, States, or political subdivisions of States.

§ 3316.2 Lease term.

(a) All oil and gas leases shall be issued for an initial period of 5 years, or not to exceed 10 years where the authorized officer finds that such longer period is necessary to encourage exploration and development in areas because of unusually deep water or other unusually adverse conditions.

(b) An oil and gas lease shall continue after such initial period for as long as oil or gas is produced from the lease in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted. The term of an oil and gas lease is subject to further extension as provided in § 3319.9 of this title.

(c) Sulphur leases shall be issued for a term not to exceed 10 years and so long thereafter as sulphur is produced from the leasehold in paying quantities, or drilling, well reworking, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are conducted thereon.

(d) Other minerals leases shall be issued for such term as may be prescribed at the time of offering the leases in the notice of lease sale.

§ 3316.3 Joint Bidding Provisions.

§ 3316.3-1 Definitions.

The following definitions shall be applicable to § 3316.3 of this title:

(a) *"Single bid"* means a bid submitted by one person for an oil and gas lease under section 8(a) of the act.

(b) *"Joint bid"* means a bid submitted by two or more persons for an oil and gas lease under section 8(a) of the act.

(c) *"Average Daily Production"* is the total of all production in an applicable production period which is chargeable under § 3316.3-3 of this title divided by the exact number of calendar days in the applicable production period.

(d) *"Barrel"* means 42 United States gallons.

(e) *"Crude Oil"* means a mixture of liquid hydrocarbons including condensate that exists in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities, but does not include liquid hydrocarbons produced from tar sand, gilsonite, oil shale, or coal.

(f) *"An Economic Interest"* means any right to, or any right dependent upon, production of crude oil, natural gas, or liquefied petroleum products and shall include, but not be limited to, a royalty interest, or overriding royalty interest, whether payable in cash or in kind, a working interest, a net profits interest, a production payment, or a carried interest.

(g) *"Liquefied Petroleum Products"* means natural gas liquid products including the following: ethane, propane, butane, pentane, natural gasoline, and other natural gas products recovered by a process of absorption, adsorption, compression, or refrigeration cycling, or a combination of such processes.

(h) *"Natural Gas"* means a mixture of hydrocarbons and varying quantities of nonhydrocarbons that exist in the gaseous phase.

(i) *"Oil and Gas Lease"* means an oil and gas lease either offered or issued pursuant to the provisions of the act.

(j) *"Owned"* means:

(1) *With respect to crude oil*—having either an economic interest in or a power of disposition over the production of crude oil;

(2) *With respect to natural gas*—having either an economic interest in or

a power of disposition over the production of natural gas; and

(3) *With respect to liquefied petroleum products*—having either an economic interest in or a power of disposition over any liquefied petroleum product at the time of completion of the liquefaction process.

(k) *"Prior Production Period"* means the continuous six month period of January 1 through June 30 preceding November 1 through April 30 for joint bids submitted during the six month bidding period from November 1 through April 30, and means the continuous six month period of July 1 through December 31 preceding May 1 through October 31 for joint bids submitted during the six month bidding period from May 1 through October 31.

(l) *"Production"*—(1)*of crude oil* means the volume of crude oil produced worldwide from reservoirs during the prior production period. The amount of such crude oil production shall be established by measurement of volumes delivered at the point of custody transfer (e.g., from storage tanks to pipelines, trucks, tankers, or other media for transport to refineries or terminals) with adjustments for

(i) Net differences between opening and closing inventories, and

(ii) Basic sediment and water;

(2) *Of natural gas* means the volume of natural gas produced worldwide from natural oil and gas reservoirs during the prior production period, with adjustments, where applicable, to reflect

(i) The volume of gas returned to natural reservoirs; and

(ii) The reduction of volume resulting from the removal of natural gas liquids and nonhydrocarbon gases.

(3) *Of liquefied petroleum peoducts* means the volume of natural gas liquids produced from reservoir gas and liquefied at surface separators, field facilities, or gas processing plants worldwide during the prior production period; these liquefied petroleum products include the following:

(i) *Condensate*—natural gas liquids recovered from gas well gas (associated and non-associated) in separators or field facilities;

(ii) *Gas Plant Products*—natural gas liquids recovered from natural gas in gas processing plants and from field facilities. Gas plant products shall include the following as classified according to the standards of the Natural Gas Processors Association (NGPA) or the American Society for Testing and Materials (ASTM):

(A) Ethane—C^2H^6

(B) Propane—C^3H^8

(C) Butane—C^4H^{10} including all products covered by NGPA specifications for commercial butane

(*1*) Isobutane,

(*2*) Normal butane,

(*3*) Other butanes—all butanes not included as isobutane or normal butane;

(D) Butane-Propane Mixtures—All products covered by NGPA specifications for butane-propane mixtures;

(E) Natural Gasoline—A mixture of hydrocarbons extracted from natural gas, which meet vapor pressure, end point, and other specifications for natural gasoline set by NGPA;

(F) Plant Condensate—A natural gas plant product recovered and separated as a liquid at gas inlet separators or scrubbers in processing plants or field facilities; and

(G) Other Natural Gas Plant Products meeting refined product standards (i.e., gasoline, kerosene, distillate, etc.).

(m) *"Six Month Bidding Period"* means the six month period of time

(1) From May 1 through October 31; or

(2) From November 1 through April 30, respectively.

§ 3316.3-2 Joint bidding requirements.

(a) Any person who submits a joint bid for any oil and gas lease during a 6 month bidding period shall have filed under oath with the Director a Statement of Production of crude oil, natural gas, and liquefied petroleum products, hereinafter referred to as a Statement of Production, no later than 45 days prior to the commencement of the applicable six month bidding period, except that for the bidding period of November 1, 1978, through April 30, 1979, no joint bid may be considered at any sale unless statements of production from all parties to that bid have been received in the office of the Director, Bureau of Land Management (Attention 541), Washington, D.C. 20240, by close of business on Friday before the sale. A Statement of Production shall state whether or not the person filing the Statement of Production was chargeable in accordance with § 3316.3–3 of this title with an average daily production in excess of 1.6 million barrels of crude oil, natural gas, and liquefied petroleum products for the prior production period. The Director shall, no less than semi-annually, publish in the Federal Register a "List of Restricted Joint Bidders," to be effective immediately upon publication and to continue in force and effect until a subsequent list is published. The List of Restricted Joint Bidders shall be made up of those persons who in the judgment of the Director, based on information available to him, including, but not limited to, sworn Statements of Production, are chargeable under § 3316.3–3 of this title with an average daily production in excess of 1.6 million barrels of crude oil, natural gas, and liquefied petroleum products for the prior production period.

(b) When a person is placed on the List of Restricted Joint Bidders the Director shall serve that person either personally or by certified mail, return receipt requested, with a copy of the Director's Order placing that person on the List of Restricted Joint Bidders. Any appeal from that Order or from an adverse effect of that Order shall be made in accordance with the provisions of 43 CFR Part 4.

(c) The submission of a Statement of Production or of a detailed Report of Production under § 3316.4(h) of this title which misrepresents the chargeable production of the reporting person shall constitute failure to comply with these regulations and any lease awarded in reliance on that Statement or Report of Production may be canceled, pursuant to section 8(o) of the act and regulations issued thereunder as having been obtained by fraud or misrepresention.

(d) The Secretary may exempt a person from the provisions of §§ 3316.3–2(a), 3316.3–4, 3316.4(h) and 3319.1(b) of this title if it is found, on the record, after an opportunity for an agency hearing, that lands being offered have extremely high cost exploration and development problems and that exploration and development will not occur on such lands unless the exemption is granted.

§ 3316.3-3 Chargeability for production.

(a) As used in this section the following definitions shall control:

(1) *"Person"* means a natural person or company.

(2) *"Company"* means a corporation, a partnership, an association, a joint-stock company, a trust, a fund, or any group of persons whether incorporated or not; it also means any receiver, trustee in bankruptcy, or similar official acting for such a company.

(3) *"Subsidiary"* means a company 50 percent or more of whose stock or other interest having power to vote for the election of directors, trustees, or other similar controlling body of the company is directly or indirectly owned, controlled, or held with the power to vote by another company; a subsidiary shall be deemed a subsidiary of the other company owning, controlling, or

holding 50 percent or more of the stock or other voting interest.

(4) *"Security or securities"* means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, pre-organization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a "security" or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

(b) A person filing a Statement of Production under § 3316.3–2 of this title shall be charged with the following production during the applicable prior production period:

(1) The average daily production in barrels of crude oil, natural gas, and liquefied petroleum products which it owned worldwide;

(2) The average daily production in barrels of crude oil, natural gas, and liquefied petroleum products owned worldwide by every subsidiary of the reporting person;

(3) The average daily production in barrels of crude oil, natural gas, and liquefied petroleum products owned worldwide by any person or persons of which the reporting person is a subsidiary; and

(4) The average daily production in barrels of crude oil, natural gas, and liquefied petroleum products owned worldwide by any subsidiary, other than the reporting person, of any person or persons of which the reporting person is a subsidiary.

(c) A person filing a Statement of Production shall be charged with, in addition to the production chargeable under paragraph (b) of this section, but not in duplication thereof, its proportionate share of the average daily production in barrels of crude oil, natural gas, and liquefied petroleum products owned worldwide by every person: (1) Which has an interest in the reporting person, and (2) in which the reporting person has an interest, whether the interest referred to in paragraphs (c) (1) and (2) of this section is by virtue of ownership of securities or other evidence of ownership, or by participation in any contract, agreement, or understanding respecting the control of any person or of any person's production of crude oil, natural gas, or liquefied petroleum products, equal to said interest. As used in paragraph (c) of this section "interest" means an interest of at least 5 percent of the ownership or control of a person.

(d) All measurements of crude oil and liquefied petroleum products under this section shall be at 60° F.

(e)(1) For purposes of computing production of natural gas under § 3316.3–2 of this title, chargeability under this section, and reporting under § 3316.4(h) of this title, 5,626 cubic feet of natural gas at 14.73 pounds per square inch (msl) shall equal one barrel.

(2) For purposes of computing production of liquefied petroleum products under § 3316.3–2 of this title, chargeability under § 3316.4(h) of this title, 1.454 barrels of natural gas liquids at 60° F shall equal one barrel of crude oil.

§ 3316.3–4 Bids disqualified.

The following bids for any oil and gas lease shall be disqualified and rejected in their entirety:

(a) A joint bid submitted by 2 or more persons who are on the effective List of Restricted Joint Bidders; or

(b) A joint bid submitted by 2 or more persons when 1 or more of those persons has not filed the required Statement of Production pursuant to § 3316.3–2 of this title for the applicable 6-month bidding period, or when 1 or more of those persons has failed or refused to file a detailed Report of Production when required to do so under § 3316.4(h) of this title, or

(c) A single or joint bid submitted pursuant to an agreement (whether written or oral, formal or informal, entered into or arranged prior to or simultaneously with the submission of such single or joint bid, or prior to or simultaneously with the award of the bid upon the tract) which provides (1) for the assignment, transfer, sale, or other conveyance of less than a 100 percent interest in the entire tract on which the bid is submitted, by a person or persons on the List of Restricted Joint Bidders, effective on the date of submission of the bid, to another person or persons on the same List of Restricted Joint Bidders; or (2) for the assignment, sale, transfer or other conveyance of less than a 100 percent interest in any fractional interest in the entire tract (which fractional interest was originally acquired by the person making the assignment, sale, transfer or other conveyance, under the provisions of the Act) by a person or persons on the List of Restricted Joint Bidders, effective on the date of submission of the bid, to another person or persons on the same List of Restricted Joint Bidders; or (3) for the assignment, sale, transfer, or other conveyance of any interest in a tract by a person or persons not on the List of Restricted Joint Bidders, effective on the date of submission of the bid, to 2 or more persons on the same List of Restricted Joint Bidders; or (4) for any of the types of conveyance described above in paragraph (c) (1), (2), or (3) where any party to the conveyance has not filed a Statement of Production pursuant to § 3316.3–2 of this title for the applicable 6 month bidding period. Assignments expressly required by law, regulation, lease, or stipulation to lease shall not disqualify an otherwise qualified bid; or

(d) A bid submitted by or in conjunction with a person who has filed a false, fraudulent or otherwise intentionally false or misleading Statement of Production or detailed Report of Production.

§ 3316.4 Submission of bids.

(a) A separate sealed bid shall be submitted for each tract unit bid upon as described in the notice of lease sale. A bid may not be submitted for less than an entire tract.

(b) Each bidder shall submit with the bid, a certified or cashier's check or bank draft on a solvent bank, or cash, or any other form of payment approved by the Secretary for one-fifth of the amount of the cash bonus, unless otherwise stated in the Notice of Sale.

(c) If the bidder is an individual a statement of citizenship shall accompany the bid.

(d) If the bidder is an association (including a partnership), the bid shall also be accompanied by a certified copy of the articles of association or appropriate reference to the record of the Bureau in which such a copy has already been filed, with a statement as to any subsequent amendments.

(e) If the bidder is a corporation, the following information shall be submitted with the bid:

(1) A certified copy of the articles of incorporation and a copy either of the minutes of the meeting of the board of directors or of the bylaws indicating that the person signing the bid has authority to do so, or,

(2) In lieu of such a copy, a certificate to that effect signed by the secretary or the assistant secretary of the corporation over the corporate seal, or appropriate reference to the records submitted to the Bureau in connection with which such articles and authority have been previously furnished.

(3) The bid shall be executed in conformance with corporate requirements.

(f) Bidders should be aware of the provisions of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

(g) Every joint bid submitted for any oil and gas lease shall be accompanied by a sworn statement by each joint bidder stating that the bid is not disqualified under § 3316.3–4(c) of this title.

(h) To verify the accuracy of any statement submitted pursuant to § 3316.3–2 of this title and paragraph (g) of this section, the Director may require the person submitting such information to: (1) submit no later than 30 days after receipt of the request by the Director, a detailed Report of Production which shall list, in barrels, the average daily production of crude oil, natural gas and liquefied petroleum products chargeable to the reporting person in accordance with § 3316.3–3 of this title for the prior production period, and (2) permit the inspection and copying by an official of the Department of the Interior of such documents, records of production of crude oil, natural gas and liquefied petroleum products, analyses and other material as are necessary to demonstrate the accuracy of any statement or information upon which any information in any Statement of Production or Report of Production was based or from which it was derived.

(i) No bid for a lease may be submitted if the Secretary finds, after notice and hearing, that the bidder is not meeting due diligence requirements on other OCS leases.

§ 3316.5 Award of leases.

(a) Sealed bids received in response to the notice of lease sale shall be opened at the place, date and hour specified in the notice. The opening of bids is for the sole purpose of publicly announcing and recording the bids received and no bids shall be accepted or rejected at that time.

(b) The United States reserves the right to reject any and all bids received for any tract, regardless of the amount offered.

(c) In the event the highest bids are tie bids, the tie bidders (unless they would be disqualified under § 3316.1(b) of this title, or disqualified under § 3316.3–4 of this title if their bids had been joint bids) may file with the Director, within 15 days after notification, an agreement to accept the lease jointly; otherwise all bids shall be rejected.

(d) Pursuant to section 8(c) of the act, the Attorney General may review the results of the lease sale prior to the acceptance of bids and issuance of leases.

(e) If the authorized officer fails to accept the highest bid for a lease within 60 days after the date on which the bids are opened, all bids for that lease shall be considered rejected.

(f) Written notice of the authorized officer's action shall be transmitted promptly to those bidders whose deposits have been held. If a bid is accepted, such notice shall transmit 3 copies of the lease to the successful bidder. The bidder shall be required, not later than the 15th day after receipt of the lease to execute the lease, pay the first year's rental, pay the balance of the bonus bid, unless deferred, and file a bond as required in § 3318.1 of this title. Deposits and any interest due shall be refunded on rejected bids.

(g) If the successful bidder fails to execute the lease within the prescribed time or otherwise comply with the applicable regulations the deposit shall be forfeited and disposed of as other receipts under the act.

(h) If, before the lease is executed on behalf of the United States, the land which would be subject to the lease is withdrawn or restricted from leasing, all deposits and any interest due shall be refunded.

(i) If the awarded lease is executed by an agent acting on behalf of the bidder, the lease shall be accompanied by evidence that the bidder authorized the agent to execute the lease. When three copies of the lease are executed and returned to the authorized officer, the lease shall be executed on behalf of the United States, and one fully executed copy shall be transmitted to the successful bidder.

(j) No lease or permit shall be issued for any area within 15 statute miles of the boundaries of the Point Reyes Wilderness in California unless the State of California allows exploration, development or production activities in the adjacent navigable waters of the State under section 11(h) of the act.

§ 3316.6 Lease form.

Oil and gas leases and leases for sulphur shall be issued on forms approved by the Director. Other mineral leases shall be issued on such forms and may be prescribed by the Secretary.

§ 3316.7 Dating of leases.

All leases issued under the regulations in this part shall be dated and become effective as of the first day of the month following the date leases are signed on behalf of the lessor. When prior written request is made, a lease may be dated and become effective as of the first day of the month within which it is so signed.

Subpart 3317—Rentals and Royalties

§ 3317.1 Rentals.

(a) An annual rental shall be due and payable, in advance, at the rate specified in the oil and gas lease, on the first day of each lease year prior to discovery of oil or gas on the lease.

(b) The owner of any lease created by the segregation of a portion of a producing lease and on which segregated portion there is no production, actual or allocated, shall pay an annual rental for such segregated portion at the rate per acre specified in the lease. This rental shall be payable each lease year following the year in which the segregation became effective and prior to a discovery on such segregated portion.

(c) Annual rental paid in any year shall be in addition to, and shall not be credited against, any royalties due from production.

(d) An annual rental on a lease for a mineral other than oil or gas, shall be due and payable, in advance, on the first day of each lease year prior to discovery in paying quantities, at a rate specified in the lease form.

§ 3317.2 Royalties.

(a) Royalties on oil and gas shall be at the rate specified in the lease, unless the Secretary, in order to promote increased production on the leased area through direct, secondary or tertiary recovery means, reduces or eliminates any royalty set forth in the lease.

(b) The royalty on sulphur shall be not less than 5 percent of the gross production or value of the sulphur at the wellhead.

§ 3317.3 Minimum royalty.

For leases which provide for minimum royalty payments, each lessee shall pay the minimum royalty specified in the lease at the end of each lease year beginning with the first lease year following a discovery on the lease.

§ 3317.4 Effect of suspensions on royalty and rental.

(a) If under the provisions of 30 CFR 250.12 (c), (d)(1), or (d)(4), the Director, Geological Survey, with respect to any lease, directs the suspension of both operations and production, or, with respect to a lease on which there is no producible well, directs the suspension of operations, no payment of rental or minimum royalty shall be required for or during the period of suspension.

(b) The lessee shall not be relieved of the obligation to pay rental, minimum royalty or royalty for or during the period of suspension if the Director,

Geological Survey: (1) under the provisions of 30 CFR 250.12(d)(1) approves, at the request of a lessee, the suspension of operations or production, or both, or (2) under the provisions of 30 CFR 250.12(d)(3) suspends any operation, including production.

(c) If the lease anniversary date falls within a period of suspension for which no rental or minimum royalty payments are required under paragraph (a) of this section, the prorated rentals or minimum royalties are due and payable as of the date the suspension period terminates. These amounts shall be computed and notice thereof given the lessee. The lessee shall pay the amount due within 30 days after receipt of such notice. The anniversary date of a lease shall not change by reason of any period of lease suspension or rental or royalty relief resulting therefrom.

Subpart 3318—Bonding

§ 3318.1 Acceptable bonds.

(a) The successful bidder, prior to the issuance of an oil and gas or sulphur lease, shall furnish the authorized officer a corporate surety bond in the sum of $50,000 conditioned on compliance with all the terms and conditions of the lease. Such bond shall not be required if the bidder already maintains or furnishes a bond in the sum of $300,000 conditioned on compliance with the terms of oil and gas and sulphur leases held by the bidder on the OCS for the area in which the lease to be issued is situated.

(b) For the purposes of this section, there are four areas: (1) the Gulf of Mexico; (2) the area offshore the Pacific Coast States of California, Oregon, Washington, and Hawaii; (3) the area offshore the Coast of Alaska; and (4) the area offshore the Atlantic Coast.

(c) A separate bond shall be required for each area. An operator's bond in the same amount may be substituted at any time for the lessee's bonds.

(d) The amount of bond coverage on leases for other minerals shall be determined by the Director at the time of the offer to lease and shall be stated in the notice of lease sale.

(e) If, as the result of a default, the surety on a Mineral Lease Bond makes payment to the United States of any indebtedness under a lease secured by the bond, the face amount of such bond and the surety's liability shall be reduced by the amount of such payment.

(f) A new bond in the amount of $300,000 shall be posted within 6 months or such shorter period as the authorized officer may direct after a default. In lieu of the $300,000 bond required in this paragraph, a separate bond for each lease may be filed within the time period authorized. Failure to post a new bond shall, at the discretion of the authorized officer, be the basis of cancellation of all leases covered by the defaulted bond, except to the extent a separate bond in lieu of the $300,000 bond required by this paragraph has been filed within the time authorized.

§ 3318.2 Form of bond.

All bonds furnished by a lessee or operator shall be on a form approved by the Director.

§ 3318.3 Additional bonds.

The authorized officer may require additional security in the form of a supplemental bond or bonds or to increase the coverage of an existing bond if, after operations or production have begun, such additional security is deemed necessary.

Subpart 3319—Assignments, Transfers, and Extensions

§ 3319.1 Assignment of leases or interests therein.

(a) Subject to the approval of the authorized officer, leases, or any undivided interest therein, may be assigned in whole, or as to any officially designated subdivision, to anyone qualified under § 3316.1(b) of this title to hold a lease.

(b) An assignment shall be void if it is made pursuant to any prelease agreement described in § 3316.3–4(c) of this title that would cause a bid to be disqualified.

(c) Any approved assignment shall be deemed to be effective on the first day of the lease month following its filing in the appropriate office of the Bureau, unless at the request of the parties, an earlier date is specified in the approval.

(d) The assignor shall be liable for all obligations under the lease accruing prior to the approval of the assignment.

(e) The assignee shall be liable for all obligations under the lease subsequent to the effective date of an assignment, and shall comply with all regulations issued under the act.

§ 3319.2 Requirements for filing of transfers.

(a)(1) All instruments of transfer of a lease or of an interest therein as to any officially designated subdivision, including operating rights, subleases and assignments of record interest, shall be filed in triplicate for approval within 90 days from the date of final execution. They shall include a statement over the transferee's own signature with respect to citizenship and qualifications similar to that required of a lessee and shall contain all of the terms and conditions agreed upon by the parties thereto. Carried working interests, overriding royalty interests or payments out of production may be created or transferred without requirement for filing or approval.

(2) An application for approval of any instrument required to be filed shall not be accepted unless accompanied by a nonrefundable fee of $25. Any document not required to be filed by these regulations but submitted for record purposes shall be accompanied by a nonrefundable fee of $25 per lease affected. Such documents may be rejected at the discretion of the authorized officer.

(b) An attorney in fact, in behalf of the holder of a lease, operating rights or sublease, shall furnish evidence of authority to execute the assignment or application for approval and the statement required by § 3316.4 of this title.

(c) Where an assignment creates a segregated lease, a bond shall be furnished in the amount prescribed in § 3318.1 of this title. Where an assignment does not create separate leases, the assignee, if the assignment so provides and the surety consents, may become a joint principal on the bond with the assignor.

(d) An heir or devisee of a deceased holder of a lease, or any interest therein, shall be recognized as the lawful successor to such lease or interest, if evidence of status as an heir or devisee is furnished in the form of: (1) a certified copy of an appropriate order or decree of the court having jurisdiction of the distribution of the estate or, (2) if no court action is necessary, the statements of two disinterested parties having knowledge of the facts or a certified copy of the will.

(e) In addition to the requirements of paragraph (d) of this section, the heirs or devisees shall file statements that they are the persons named as successors to the estate with evidence of their qualifications as provided in § 3316.4 of this title.

(f) In the event an heir or devisee is unable to qualify to hold the lease or interest, the heir or devisee shall be recognized as the lawful successor of the deceased and be entitled to hold the lease for a period of not to exceed 2 years from the date of death of the predecessor in interest.

(g) Each obligation under any lease and under the regulations in this part shall inure to the heirs, executors, administrators, successors, or assignees of the lessee.

(h) Where the proposed assignment or transfer is by a person who, at the time of acquisition of an interest in the lease, was on the List of Restricted Joint Bidders, and that assignment or transfer is of less than the entire interest of the assignor or transferor, to a person or persons on the same List of Restricted Joint Bidders, the assignor or transferor shall file a copy, prior to approval of the assignment, of all agreements applicable to the acquisition of that lease or a fractional interest.

§ 3319.3 Attorney General review.

Prior to the approval of an assignment or transfer, the Secretary shall consult with and give due consideration to the views of the Attorney General. The Secretary may act on an assignment or transfer if the Attorney General has not responded to the request for consultation within 30 days of said request.

§ 3319.4 Separate filings for assignments.

A separate instrument of assignment shall be filed for each lease. When transfers to the same person, association or corporation, involving more than one lease are filed at the same time for approval, one request for approval and one showing as to the qualifications of the assignee shall be sufficient.

§ 3319.5 Effect of assignment of particular tract.

(a) When an assignment is made of all the record title to a portion of the acreage in a lease, the assigned and retained portions become segregated into separate and distinct leases. In such a case, the assignee becomes a lessee of the Government as to the segregated tract that is the subject of assignment, and is bound by the terms of the lease as though the lease had been obtained from the United States in the assignee's own name, and the assignment, after its approval, shall be the basis of a new record. Royalty, minimum royalty and rental provisions of the original lease shall apply separately to each segregated portion

(b) For assignments of a portion of an oil and gas lease approved after the effective date of ths section, each segregated lease shall continue in full force and effect for the primary term of the original lease and so long thereafter as oil or gas is produced from that segregated portion of the leased area in paying quantities or drillng or well reworking operations as approved by the Secretary are conducted.

(c) For those assignments approved prior to the effective date of this section, each segregated lease shall continue in full force and effect for the primary term of the original lease and so long thereafter as oil and gas may be produced from the original leased area in paying quantities or drilling or well reworking operations, as approved by the Secretary, are conducted.

§ 3319.6 Extension of lease by drilling or well reworking operations.

The term of a lease shall be extended beyond the primary term so long as drilling or well reworking operations are approved by the Secretary according to the conditions set forth in 30 CFR 250.35.

§ 3319.7 Directional drilling.

In accordance with an approved exploration plan or development and production plan, a lease may be maintained in force by directional wells drilled under the leased area from surface locations on adjacent or adjoining land not covered by the lease. In such circumstances, drilling shall be considered to have commenced on the leased area when drilling is commenced on the adjacent or adjoining land for the purpose of directional drilling under the leased area through any directional well surfaced on adjacent or adjoining land. Production, drillling or reworking of any such directional well shall be considered production or drilling or reworking operations on the leased area for all purposes of the lease.

§ 3319.8 Compensatory payments as production.

If an oil and gas lessee makes compensatory payments as provided in 30 CFR 250.33 and if the lease is not being maintained in force by other production of oil or gas in paying quantities or by other approved drilling or reworking operations, such payments shall be considered as the equivalent of production in paying quantities for all purposes of the lease.

§ 3319.9 Effect of suspensions on lease term.

(a) If the Director, Geological Survey, directs the suspension of either operations or production, or both, under the provisions of 30 CFR 250.12 (c), (d)(1) or (d)(4) with respect to any lease in its primary term, the primary term of the lease shall be extended by a period equivalent to the period of the suspension.

(b) If the Director, Geological Survey, orders or approves the suspension of either operations or production, or both, under the provision for 30 CFR 250.12 (c), (d)(1), or (d)(4) with respect to any lease extended beyond its primary term, the term of the lease shall not be deemed to expire so long as the suspension remains in effect.

Subpart 3320—Termination of Leases

§ 3320.1 Relinquishment of leases or parts of leases.

A lease or any officially designated subdivision thereof may be surrendered by the record title holder by filing a written relinquishment, in triplicate, with the appropriate OCS office of the Bureau. No filing fee is required. A relinquishment shall take effect on the date it is filed subject to the continued obligation of the lessee and the surety to make all payments due, including any accrued rentals, royalties and deferred bonuses and to abandon all wells and condition or remove all platforms and other facilities on the land to be relinquished to the satisfaction of the Director, Geological Survey.

§ 3320.2 Cancellation of leases.

(a) Any nonproducing lease issued under the act may be cancelled by the authorized officer whenever the lessee fails to comply with any provision of the act or lease or applicable regulations, if such failure to comply continues for 30 days after mailing of notice by registered or certified letter to the lease owner at the owner's record post office address. Any such cancellation is subject to judicial review as provided section 23(b) of the act.

(b) Producing leases issued under the act may be cancelled by the Secretary whenever the lessee fails to comply with any provision of the act, applicable regulations or the lease only after judicial proceedings as prescribed by section 5(d) of the act.

(c) Any lease issued under the act, whether producing or not, shall be canceled by the authorized officer upon proof that it was obtained by fraud or misrepresentation, and after notice and opportunity to be heard has been afforded to the lessee.

(d) Pursuant to section 5(a) of the act, the Secretary may cancel a lease when: (1) continued activity pursuant to such lease would probably cause serious harm or damage to life, property, any mineral, national security or defense, or to the marine, coastal or human environment; (2) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and (3) the advantages of cancellation outweigh the advantages of continuing such lease or permit in force. Procedures and conditions contained in 30 CFR 250.12 shall apply as appropriate.

Subpart 3321—Section 6 Leases

§3321.1 Effect of regulations on lease.

(a) All regulations in this part, insofar as they are applicable, shall supersede the provisions of any lease which is maintained under section 6(a) of the act. However, the provisions of a lease relating to area, minerals, rentals, royalties (subject to sections 6(a)(8) and (9) of the act), and term (subject to section 6(a)(10) of the act and, as to sulfur, subject to section 6(b)(2) of the act) shall continue in effect, and, in the event of any conflict or inconsistency, shall take precedence over these regulations.

(b) A lease maintained under section 6(a) of the act shall also be subject to all operating and conservation regulations applicable to the OCS. In addition, the regulations relating to geophysical and geological exploratory operations and to pipeline rights-of-way are applicable, to the extent that those regulations are not contrary to or inconsistent with the lease provisions relating to area, the minerals, rentals, royalties and term. The lessee shall comply with any provision of the lease as validated, the subject matter of which is not covered in the regulations in this part.

§ 3321.2 Leases of other minerals.

The existence of a lease that meets the requirements of section 6(a) of the act shall not preclude the issuance of other leases of the same area for deposits of other minerals. However, no other lease of minerals shall authorize or permit the lessee thereunder unreasonably to interfere with or endanger operations under the existing lease. No sulphur leases shall be granted by the United States on any area while such area is included in a lease covering sulphur under section 6(b) of the act.

Subpart 3331—Studies

§ 3331.1 Environmental studies.

(a) The Director shall conduct a study of any area or region included in any lease sale in order to establish information needed for assessment and management of impacts on the human, marine and coastal environments which may be affected by OCS oil and gas activities in such area or region. Any study shall, to the extent practicable, be designed to predict environmental impacts of pollutants introduced into the environments and of the impacts of offshore activities on the seabed and affected coastal areas.

(b) Studies shall be planned and carried out in cooperation with the affected States and interested parties and, to the extent possible, shall not duplicate studies done under other laws. Where appropriate, the Director shall, to the maximum extent practicable, enter into agreements with the National Oceanic and Atmospheric Administration in executing the environmental studies responsibilities. By agreement, the Director may also utilize services, personnel or facilities of any Federal, State or local government agency in the conduct of such study.

(c) Any study of an area or region required by paragraph (a) of this section for a lease sale shall be commenced not later than six months prior to holding a lease sale for that area. The Director may utilize information collected in any prior study. The Director may initiate studies for areas or regions not identified in the leasing program.

(d) After the leasing and developing of any area or region, the Director shall conduct such studies as are deemed necessary to establish additional information and shall monitor the human, marine and coastal environments of such area or region in a manner designed to provide information which can be compared with the results of studies conducted prior to OCS oil and gas development. This shall be done to identify any significant changes in the quality and productivity of such environments, to establish trends in the areas studies, and to design experiments identifying the causes of such changes. Findings from such studies shall be used to recommend modifications in practices which are employed to mitigate the effects of OCS activities and to enhance the data/information base for predicting impacts which might result from a single lease sale or cumulative OCS activities.

(e) Information available or collected by the studies program shall, to the extent practicable, be provided in a form and in a timeframe that can be used in the decisionmaking process associated with a specific leasing action or with longer term OCS minerals management responsibilities.

Subpart 3340—Grants of Pipeline Rights-of-way on the Outer Continental Shelf

§ 3340.0-1 Purpose.

(a) The purpose of these regulations is to provide the procedure for the granting and administering of rights-of-way for the transportation of minerals by pipeline through the OCS.

(b) Compliance with the regulations of this subpart does not supersede the requirements of complying with the regulations of the Department of Transportation, the Department of the Army and the Federal Energy Regulatory Commission.

§ 3340.0-2 Policy.

The respective Bureau of Land Management OCS offices shall, as appropriate, engage in transportation planning in advance of receipt of an application for a right-of-way. The intergovernmental planning program or similar process shall be used to involve relevant parties in this advanced planning.

The construction of gathering lines may be approved by the Director, Geological Survey, in accordance with the provisions of 30 CFR 250.18 and 250.68.

§ 3340.0-5 Definitions.

As used in this subpart, the term "right-of-way" includes the site on which the pipeline and associated structures are situated which shall not exceed 200 feet in width for pipelines unless safety and environmental factors during construction and operations require a greater width and shall be limited to the area reasonably necessary for pumping stations or other accessory structures. It does not include gathering lines and associated structures constructed for the purpose of conveying production for gathering, storage or treating of the production from a lease or leases.

§ 3340.1 Nature of grant.

(a) An applicant, by accepting a right-of-way grant, agrees and consents to comply with the requirements set out below.

(1) The holder shall comply with all existing regulations and with all existing and future regulations which the Secretary determines to be necessary and proper in order to provide for the prevention of waste, the conservation of the natural resources of the OCS and the protection of correlative rights therein. The holder shall comply with all stipulations which the authorized officer attaches to the right-of-way grant for the purpose of assuring maximum environmental protection. The holder shall utilize the best available and safest technologies, such as the safest reasonable pipeline burial techniques, which the Secretary determines to be economically feasible.

(2) The holder shall pay the United States or its lessees or right-of-way holders, as the case may be, the full value for all damages to the property of the United States or its said lessees or right-of-way holders, and shall indemnify the United States against any and all liability for damages to life,

person or property arising from the occupation and use of the area covered by the right-of-way grant.

(3) The authorized officer shall be kept informed at all times of the holder's address, and, if a corporation, of the address of its principal place of business and the name and address of the officer or agent authorized to receive service of notice. In the construction, operation and maintenance of the pipeline, the holder shall not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin and shall require an identical provision in all subcontracts.

(4) The granting of the right-of-way shall be subject to the express conditions that the rights granted shall not prevent or interfere in any way with the management, administration of, or the granting, either prior or subsequent to the right-of-way grant, of other rights by the United States. Moreover, the holder agrees to allow the occupancy and use by the United States, its lessees or other rights-of-way holders of any part of the right-of-way grant not actually occupied or necessarily incident to its use for any necessary operations involved in the management, administration or the enjoyment of such other granted rights.

(5) For the first calendar year or fraction thereof, and thereafter annually, the holder shall pay the Bureau, in advance, an annual rental of $15 for each statute mile or fraction thereof, traversed by the right-of-way and $75 for each area applied for as a site for an accessory to the right-of-way, including, but not limited, to a platform. Payments may be on an annual basis, for a 5-year period or for multiples of the 5-year period.

(6) Upon abandonment, relinquishment, revocation or termination of the right-of-way grant, the holder shall remove any platforms, structures, domes over valves, the pipe, taps and valves along the right-of-way which would present any hazard to navigation or fishing, unless this requirement is waived in writing by the authorized officer. In order to secure a waiver, the holder shall demonstrate to the satisfaction of the authorized officer that any abandonment in place shall not constitute an unreasonable hazard to navigation, fishing or the marine environment, and the line has been purged to remove materials that, if released, could be harmful to the marine environment. The holder shall also demonstrate to the satisfaction of the authorized officer that all open ends of the pipe have been plugged and buried to a minimum cover of three feet or such other depth as may be required by the authorized officer.

Any improvement required to be removed shall be removed by the holder within one year of the effective date of the relinquishment, revocation, termination or abandonment. All such structures, accessories thereto, or improvements not removed within the time provided herein, shall become the property of the United States but that shall not relieve the holder of liability for the cost of their removal or for restoration of the site. Any application for relinquishment of a right-of-way shall be filed in accordance with § 3340.5 of this title.

(7) The holder shall suspend operations of any pipeline for a period of time specified by the authorized officer upon a determination by the authorized officer that continued operation would threaten or result in serious, irreparable, or immediate harm to life (including fish and other aquatic life), to property, to mineral deposits or the marine, coastal or human environments. The authorized officer may, to aid in the determination, request and consider the views and recommendations of appropriate Federal and State agencies. The authorized officer may also suspend operations if the holder fails to comply with applicable law, regulations or terms of the grant. The Secretary may cancel a grant under section 5(a)(2) of the act.

(8) The holder shall operate and maintain the pipeline in such a manner so as not to pose an unreasonable obstruction to fishing and shipping operations.

(9) The holder shall furnish the authorized officer, within 30 days of request, all data as to maximum design capacity of the pipeline, average product quantity being moved as of the time of request and copies of all contracts for transportation existing at the time of request.

(10) The holder shall assure that such oil or gas pipelines shall, at the option of the Federal Energy Regulatory Commission, either transport or purchase oil or natural gas produced from submerged lands in the vicinity of the pipeline without discrimination and in such proportionate amounts as the Federal Energy Regulatory Commission, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste.

(11) The holder shall provide open and nondiscriminatory access to the pipeline to both owner and nonowner shippers.

(12) The holder shall comply with the provisions of section 5(f)(1)(B) of the act under which the Federal Energy Regulatory Commission may order an expansion of the throughput capacity of a pipeline which is authorized after September 18, 1978, and which is not located in the Gulf of Mexico or the Santa Barbara Channel.

(b) Failure to comply with the act, regulations or any conditions prescribed by the Secretary as to the right-of-way and the survey, location and width of a pipeline shall be grounds for forfeiture of the grant in an appropriate judicial proceeding instituted by the United States in any United States District Court having jurisdiction under the provisions of section 23 of the act.

(c) Any right-of-way granted under the provisions of this subpart shall be for so long as the pipeline is properly maintained and used for the purpose for which the grant was made, unless otherwise expressly stated in the grant. Temporary cessation or suspension shall not terminate the grant. Where pipeline segments become corroded or otherwise worn and need replacement, proper maintenance may be performed under a temporary cessation of use. If the purpose of the grant ceases to exist or use of the pipeline is permanently discontinued for any reason, the grant shall be subject to forfeiture.

§ 3340.2 Application procedures.

§ 3340.2-1 Applications.

(a) No special form of application is required. The application shall be filed in triplicate in the OCS office having jurisdiction of the lands covered by the application. It shall specify that it is made pursuant to the act and these regulations and that the applicant agrees that if the right-of-way grant is approved, the grant shall be subject to the terms and conditions of the regulations in this part. It shall also state the primary purpose for which the right-of-way is to be used. If the right-of-way has been utilized prior to the time the application is made, the application shall state the date such utilization commenced and by whom, and the date applicant obtained control of the improvement. A nonrefundable filing fee of $100 and the rental required herein under § 3340.1(a)(5) of this title, shall accompany the application. A separate application shall be filed for each right-of-way.

(b) Each copy of the application shall be accompanied by a map, showing the

center line of the right-of-way, properly identified so that the right-of-way can be accurately located by a competent engineer. The map shall comply with the following requirements:

(1) The scale shall be at least 1":4,000', or such other scale as may be determined by the authorized officer.

(2) Distances of the center line of the right-of-way and grid references for all turning points shall be given either on the margin of the map or on an attached sheet or sheets with the courses referred to the true or grid meridian, either by deflection from a line of known bearing or by independent observation and calculated distances in feet and decimals.

(3) The total distance and width of the right-of-way shall be given, and the diameter of the pipeline specified.

(4) The initial and terminal points of the right-of-way and any continuation into State jurisdiction shall be accurately located by grid references, even though the right-of-way may have an onshore terminal point.

(5) Each copy of the map shall bear upon its face a signed certificate of the engineer who made the map that the right-of-way is accurately represented upon the map, and the design characteristics are in accordance with Department of Transportation regulations.

(c) Rights-of-way issued pursuant to section 5(e) of the act may be acquired or held only by citizens and nationals of the United States, aliens lawfully admitted for permanent residence in the United States as defined in 8 U.S.C. § 1101(a)(20), private, public or municipal corporations organized under the laws of the United States, the District of Columbia, or of any State, or territory thereof, or associations of such citizens, nationals, resident aliens or private, public or municipal corporation, States or political subdivision of States.

(d)(1) An individual applicant shall submit with the application a statement of citizenship or nationality. An applicant who is an alien lawfully admitted for permanent residence in the United States shall also submit with the application evidence of such status.

(2) If the applicant is an association (including a partnership), the application shall also be accompanied by a certified copy of the articles of association or appropriate reference to the record of the Bureau in which such a copy has already been filed, with a statement as to any subsequent amendments.

(3) If the applicant is a corporation, the following additional information shall be submitted with the application:

(i) a statement certified by the secretary or assistant secretary of the corporation with the corporate seal, showing the state in which it is incorporated and the name of the person(s) authorized to act on behalf of the corporation, or

(ii) in lieu of such a statement, an appropriate reference to statements or records previously submitted to the Bureau (including material submitted in compliance with prior regulations).

(e)(1) An applicant shall show the extent to which the right-of-way applied for invades or crosses mineral leases, rights-of-way or Geological Survey easements other than the applicant's own. The application shall contain a statement that a copy of the application has been delivered personally or by registered or certified mail to each lessee or right-of-way, or easement holder whose lease, right-of-way, or easement is so affected. When the statement is filed, no final action shall be taken on the right-of-way grant application until 30 days have elapsed after the date of service of such papers, in order to afford the parties concerned ample opportunity to comment on the granting of the right-of-way. A copy of the comments shall be filed with the authorized officer for his consideration.

(2) If the authorized officer determines that a change in the application as filed should be made based on the comments received, the authorized officer shall notify the applicant that an amended application shall be filed subject to changes which the authorized officer stipulates. The authorized officer shall determine whether the applicant shall deliver copies of the amended application to other parties for comment pursuant to 3340.2–1(e)(1) of this title.

§ 3340.2–2 Approval action.

(a) In considering the application for a right-of-way, the authorized officer shall consider the potential effect of the pipeline on the human, marine and coastal environments, life, including aquatic life, property and mineral resources in the entire area during construction and operational phases. The authorized officer shall prepare an environmental analysis in accordance with applicable policies and guidelines. To aid in the evaluation and determinations, the authorized officer may request and consider views and recommendations of appropriate Federal agencies, may hold public meetings after appropriate notice, and may consult, as appropriate, with State agencies, organizations, industries and individuals. The authorized officer shall attach, as a condition to approval, special stipulations and conditions necessary to protect human, marine and coastal environments, life, including aquatic life, property and mineral resources, located on or adjacent to the proposed right-of- way. In approving the pipeline right-of-way, consideration shall be given to any recommendation of the intergovernmental planning program, or similar process, for the assessment and management of OCS oil and gas transportation.

(b) If the right-of-way as applied for crosses any area withdrawn from disposal or restricted from oil and gas activities, it shall be rejected unless the Federal agency in charge of such withdrawn or restricted area gives its consent to the granting of the right-of-way. In such case the applicant, upon request filed within 30 days after receipt of the rejection notice, shall be allowed an opportunity to file an amended application rerouting the proposed right-of-way so as to eliminate the conflict.

(c) Should the proposed route of the right-of-way adjoin and subsequently cross any State submerged lands, the applicant shall submit to the authorized officer evidence that the State or States so affected have reviewed the application, and shall submit any comment received, including any recommendations to relocate the route, if such relocation is considered necessary. In the event of a State recommendation to relocate the proposed route, the authorized officer shall coordinate with the appropriate State officials all applications for right-of-way grants that pass from Federal to State submerged lands.

(d) If an application is for a grant for a right-of-way affecting any land or water use in the coastal zone of any State with a coastal zone management program approved under section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455), then the application shall not be approved unless it is consistent with the approved coastal zone management program or until the Secretary of Commerce makes a finding that the right-of-way will be consistent with the objectives or purposes of the Coastal Zone Management Act of 1972, or is necessary in the interest of national security. However, if the application is for a grant for a right-of-way that has been described in detail in an approved development and production plan, then the application may be approved without a further finding of consistency with any approved coastal zone management program or a further finding on the part of the Secretary of Commerce. (See 30 CFR 250.34–2)

(e) If the application and other required information are found to be in compliance with applicable law and regulations, the right-of-way may be granted. If the application is rejected, the decision shall be in writing and shall state the reasons for the decision.

§ 3340.3 Construction.

(a) Failure to construct the pipeline within 5 years from the date of the grant shall be deemed to be an abandonment of the grant and deemed to be a forfeiture. Proof of construction shall be submitted to the authorized officer within 90 days after completion of construction of the pipeline. Such proof shall consist of drawings of the pipeline as built, in triplicate; a signed certificate by the engineer that the pipeline is accurately represented; grid references for all turning points on the line; and other data as required by the authorized officer. If there is substantial deviation from the right-of-way as shown on the original map, the unused portion of the grant shall be relinquished and maps, in triplicate, of the location of the right-of-way as constructed shall be furnished to the authorized officer as soon as possible after the deviation is determined to be necessary or advisable. Any deviation made prior to approval of such supplemental plat shall be at the risk of the holder.

(b) Right-of-way grants shall be reviewed annually prior to commencement of construction of any pipeline. Any significant change in conditions subsequent to the granting of a right-of-way but prior to commencement of construction may be grounds for a request to alter the grant by the authorized officer. The authorized officer shall give consideration to any recommendation of the intergovernmental planning program or similar process.

§ 3340.4 Assignment of right-of-way.

(a) Assignment may be made of a right-of-way grant in whole or of any lineal segment thereof, subject to the approval of the authorized officer. Any such proposed assignment shall be filed in triplicate, accompanied by an application for approval in which the assignee shall make the showing required by § 3340.2–1(c) of this title and agree to the terms and conditions prescribed in § 3340.1(a) of this title.

(b) Any proposed assignment, in whole or in part of any right, title or interest in a right-of-way grant, shall be accompanied by the same showing of qualifications of the assignees as is required of an applicant, and shall be supported by a stipulation that the assignee agrees to comply with and to be bound by the terms and conditions of the right-of-way grant. No transfer shall be recognized unless and until it is first approved, in writing, by the authorized officer. A nonrefundable fee of $25 shall acompany the application for the approval of an assignment.

§ 3340.5 Relinquishment of rights-of-way.

A right-of-way grant or a portion thereof may be surrendered by the record holder by filing a written relinquishment, in triplicate, with the authorized officer. A relinquishment shall take effect on the date it is filed subject to the satisfaction of all requirements for abandonment in § 3340.1(a)(6) of this title.

§ 3340.6 Change of use or flow.

(a) A change may be made by the holder in the use of the pipeline or direction of flow from that specified in the approved permit only if prior approval is obtained from the Department of Transportation and the authorized officer. Application for such a change shall be filed not less than 15 working days in advance of the proposed change of use or flow.

(b) Each application shall specify whether the change is to be temporary or permanent, and any technical changes necessary to accommodate the change.

(c) Each application shall demonstrate that the pipeline is physically and technically adaptable to the proposed change without adverse environmental effects.

§ 3340.7 Bonding.

(a) Prior to the issuance of a right-of-way grant the applicant shall furnish the authorized officer a corporate surety bond in the sum of $300,000 conditioned on compliance with all the terms of the grant. A similar bond shall be furnished for all previously issued rights-of-way within 90 days of the effective date of this section. Such bond shall not be required if the applicant already maintains or furnishes a bond in the sum of $300,000 conditioned on compliance with the terms of all right-of-way grants held by the applicant on the OCS for the area in which the grant to be issued is situated. This bond shall be in addition to any bond required of a lessee in subpart 3318 of this title.

(b) For the purposes of this section, there are four areas: (1) the Gulf of Mexico; (2) the area offshore the Pacific Coast States of California, Oregon, Washington, and Hawaii; (3) the area offshore the Coast of Alaska; and (4) the area offshore the Atlantic Coast.

(c) A separate bond shall be required for each area.

(d) If, as the result of a default, the surety on a right-of-way grant bond makes payment to the Government of any indebtedness under a grant secured by the bond, the face amount of such bond and the surety's liability shall be reduced by the amount of such payment.

(e) A new bond in the amount of $300,000 shall be posted within 6 months or such shorter period as the authorized officer may direct after a default. Failure to post a new bond shall, at the discretion of the authorized officer, be the basis of cancellation of all grants covered by the defaulted bond.

Appendix A

Suggested Bid Form. It is suggested that bidders submit their bids to the Manager, Outer Continental Shelf Office, in the following form:

Oil and Gas Bid

The following bid is submitted for an oil and gas lease on the tract of the Outer Continental Shelf specified below:

Tract No.....
Total amount bid.....
Amount per acre/hectare.....
Amount of cash bonus submitted with bid.....

Proportionate Interest of Company(ies) Submitting Bid

Qualification No.....
Company.....
Percent interest.....
Address.....
Signature...(Please type signer's name under signature)

Appendix B

Required Joint Bidder's Statement. In the case of joint bids, each joint bidder is required to execute a joint bidder's statement before a notary public and submit it with his bid. A suggested form for this statement is shown below.

Joint Bidder's Statement

I hereby certify that _____ (entity submitting bid) is eligible under 43 CFR 3316.3 to bid jointly with the other parties submitting this bid.

_____

Signature (Please type signer's name under signature)

Sworn to and subscribed before me this _____ day of _____ 19——.

_____

Notary Public
State of.....
County of.....

Guy R. Martin,
Assistant Secretary of the Interior.
June 25, 1979.

[FR Doc. 79–20172 Filed 6–28–79; 8:45 am]

GPO 853 – 179

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2540, 2740, and 9180

[Circular No. 2447]

Omitted Lands and Unsurveyed Islands

Under the authority of section 211 and 310 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1721 and 1740), Parts 2540, 2740 and 9180, Subchapters B and I, Chapter II, Title 43 of the Code of Federal Regulations are amended as set forth below.

1. Part 2540 is amended by changing its title as follows:

PART 2540—COLOR-OF-TITLE AND OMITTED LANDS

2. Part 2540, Subpart 2540, § 2540.0–3 is amended by adding an additional source of authority (paragraph (g)) to read as follows:

§ 2540.0–3 Authority.

* * * * *

(g) The Federal Land Policy and Management Act of 1976.

(1) Section 211 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1721), authorizes the Secretary of the Interior in his discretion to sell at not less than fair market value to the occupant thereof any omitted lands which, after survey, are found to have been occupied and developed for a 5-year period prior to January 1, 1975.

(2) The Act provides that all such conveyances under the Act must be in the public interest and will serve objectives which outweigh all public objectives and values served by retaining such lands in Federal ownership.

(3) Section 208 of the Act (43 U.S.C. 1718) further provides that the Secretary of the Interior shall issue patents subject to such terms, convenants, conditions, and reservations as deemed necessary to insure proper land use and protection of the public interest.

(4) Section 209 of the Act (43 U.S.C. 1719) provides that all patents issued under the Act shall reserve to the United States all minerals in the lands, together with the right to prospect for, mine, and remove the minerals under applicable law and such regulations as the Secretary may prescribe, except as provided by section 209(b) of the Act.

3. Part 2540, Subpart 2541, is amended by changing the title as follows:

Subpart 2541—Color-of-Title Act

4. Part 2540 is further amended by adding Subpart 2547 to read as follows:

Subpart 2547—Omitted Lands—General

Sec.
2547.1 Qualifications of applicants.
2547.2 Procedures; applications.
2547.3 Price of land; payment.
2547.4 Publication and protests.
2547.5 Disposal considerations.
2547.6 Lands not subject to disposal under this subpart.

Authority: Sec. 211 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1721 and 1740).

Subpart 2547—Omitted Lands—General

§ 2547.1 Qualifications of applicants.

(a) Any person authorized to hold title to land in the State may make application under section 211 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1721). For regulations on conveyances of omitted lands and unsurveyed islands to State and local governments see subpart 2342 of this title.

(b) The applicant shall be a citizen of the United States, or in the case of corporation, shall be organized under the laws of the United States or any State thereof.

(c) The applicant shall have occupied and developed the lands for a 5-year period prior to January 1, 1975.

§ 2547.2 Procedures; applications.

(a) The description of the omitted lands applied for shall be sufficiently complete to identify the location, boundary, and area of the land, including, if possible, the legal description of the land by section or fractional section, township, range, meridian and State.

(b) Each application shall be accompanied by a filing fee of $50 that is nonreturnable. The application shall be filed in accordance with the provisions of § 1821.2 of this title.

(c) No special form of application is required. The application shall be typewritten or in legible handwriting and shall contain the following information:

(1) The full name and legal mailing address of the applicant.

(2) The description and acreage of the public lands claimed.

(3) A statement showing that the applicant is qualified or authorized to hold title to land in the State, is a citizen of the United States, and in the case of a corporation, is organized under the laws of the United States or any State thereof.

(4) A statement describing how the applicant has satisfied the requirements of the statute.

(5) A statement describing the nature and extent of any developments made to the lands applied for and describing the period and type of any occupancy of the land.

(6) The names and legal mailing addresses of any known adverse claimants or occupants of the applied for lands.

(7) A citation of the Act under which the application is being made.

§ 2547.3 Price of land; payment.

(a) The land applied for shall be appraised for fair market value at the time of appraisal. However, in determination of the price payable by the applicant, value resulting from development and occupation by the applicant or his predecessors in interest shall be deducted from the appraised price.

(b) The applicant shall also be required to pay administrative costs, including:

(1) the cost of making the survey,

(2) the cost of appraisal, and

(3) the cost of making the conveyance.

(c) The applicant shall be required to make payment of the sale price and administrative costs within the time stated in the requests for payment or any extensions granted thereto by the authorized officer.

§ 2547.4 Publication and protests.

(a) The applicant shall be required to publish a notice of the application once a week for five consecutive weeks in

Published in 44 F.R. 41792, July 18, 1979 - Effective August 17, 1979

Circular Distribution List

accordance with § 1824.3 of this title, in a designated newspaper and in a designated form. All persons claiming the land adversely may file with the State Office of the Bureau of Land Management in which the lands are located, their objections to issuance of patent under the application. A protestant shall serve on the applicant a copy of the objections and furnish evidence of such service.

(b) The applicant shall file at the appropriate BLM office a statement of the publisher, accompanied by a copy of the notice published, showing that the publication has been made for the required time.

§ 2547.5 Disposal considerations.

(a) Disposal under this provision shall not be made until:

(1) It has been determined by the authorized officer that such conveyance is in the public interest and will serve objectives which outweigh all public objectives and values which would be served by retaining such lands in Federal ownership.

(2) The relevant State government, local government, and areawide planning agency designated under section 204 of the Demonstration Cities and Metropolitan Act of 1966 (80 Stat. 1255, 1262), and/or title IV of the Intergovernmental Cooperation Act of 1968 (82 Stat. 1098, 1103–4) have notified the authorized officer as to the consistency of such conveyance with applicable State and local government land use plans and programs.

(3) The plat of survey has been officially filed.

§ 2547.6 Lands not subject to disposal under this subpart.

This subpart shall not apply to any lands within the National Forest System, defined in the Act of August 17, 1974 (16 U.S.C. 1601), the National Park System, the National Wildlife Refuge System, and the National Wild and Scenic Rivers System.

§ 2547.7 Coordination with State and local governments.

At least 60 days prior to offering land for sale, the authorized officer shall notify the Governor of the State within which the lands are located and the head of the governing body of any political subdivision of the State having zoning or other land use regulatory jurisdiction in the geographical area within which the lands are located that the lands are being offered for sale. The authorized officer shall also promptly notify such public officials of the issuance of the patent for such lands.

PART 2740—RECREATION AND PUBLIC PURPOSES ACT

5. Part 2740 is amended by adding a new paragraph (c) to § 2740.0–8 to read as follows:

§ 2740.0–8 Lands subject to disposition.

* * * * *

(c) Omitted lands and unsurveyed islands may be conveyed to States or their political subdivisions under the provisions of law added by section 211 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1721).

6. Part 2740 is amended by adding Subpart 2742 to read as follows:

Subpart 2742—Recreation and Public Purposes Act—Omitted Lands and Unsurveyed Islands

Sec.

2742.1 Qualifications of applicants.
2742.2 Survey requirement.
2742.3 Conveyance limitations.
2742.4 Consistency with other laws.

Authority: Sec. 211 and 310, Federal Land Policy and Management Act of 1976 (43 U.S.C. 1721 and 1740).

Subpart 2742—Recreation and Public Purposes Act—Omitted Lands and Unsurveyed Islands

§ 2742.1 Qualifications of applicants.

States and their political subdivisions are qualified applicants.

§ 2742.2 Survey requirement.

(a) Islands.

(1) Survey is not necessary. However, unsurveyed islands shall be determined by the Secretary to be public lands of the United States.

(2) Islands shall be surveyed at the request of the applicant, as provided in Part 9185 of this chapter.

(b) Determination as to whether lands, other than islands, are public lands of the United States erroneously or fraudulently omitted from the original surveys shall be by survey. Surveys shall be in accordance with the requirements of Part 9185 of this Title.

§ 2742.3 Conveyance limitations.

(a) No conveyances shall be made under this section until the relevant State government, local government, and areawide planning agency have notified the Secretary as to the consistency of such conveyance with applicable State and local government land use plans and programs.

(b) At least 60 days prior to offering for sale or otherwise conveying public lands under this section, the Secretary shall notify the Governor of the State within which such lands are located and the head of the governing body of any political subdivision of the State having zoning or other land-use regulatory jurisdiction in the geographical area within which such lands are located in order to afford the appropriate body the opportunity to zone or otherwise regulate change or amend existing zoning or other regulations concerning the use of such lands prior to such conveyance.

(c) Conveyances under this section may be made without regard to acreage limitations contained in the Recreation and Public Purposes Act.

§ 2742.4 Consistency with other laws.

The provision of the Recreation and Public Purposes Act prohibiting disposal for any use authorized under any other law does not apply to conveyances under this subpart.

PART 9180—CADASTRAL SURVEY

7. Part 9180, section 9185.1–1 is amended by revising paragraph (b) to read as follows:

§ 9185.1–1 Surveys.

(a) * * *

(b) *Lands omitted from original survey.* Application for the survey of an unsurveyed island or other land omitted from the orginal survey shall be made on Form 9600–2, or its equivalent, and filed in duplicate with the State director for the State in which lands are situated.

8. Section 9185.2–2(a) is revised to read as follows:

§ 9185.2–2 Lands omitted from original survey.

(a) *Notice of intended application.* Notice of intention to apply for survey of an island or other land omitted from the original survey shall be served on the adjacent land owners, and the Attorney General and the Secretary of State for the State in which the land is situated, at least 30 days prior to the date of application for survey. Service may be had by return receipt mail or in person, evidence of which may consist of the return receipt or signed acknowledgment of service. A copy of each notice, with proof of service thereof, shall be filed with the application. Failure to obtain evidence of service may be explained.

9. Subpart 9185 is further amended by adding § 9185.2–3 to read as follows:

§ 9185.2–3 Unsurveyed islands and omitted lands.

(a) Section 211(a) of the Federal Land

Policy and Management Act of 1976 (90 Stat. 2758), provides for the conveyance under the Recreation and Public Purposes Act of unsurveyed islands determined by the Secretary to be public lands of the United States. The conveyance of any such island may be made without survey; however, such island shall be surveyed at the request of the qualified applicant. If the applicant requests that a survey be executed, the applicant shall be required to:

(1) Furnish a written statement identifying his choice of donation of money, services, or both for the survey.

(2) If the applicant elects to donate money, such donation shall equal the Bureau of Land Management's estimated cost of survey. The donated money shall be credited and expended in accordance with section 307(c) of the Act. A written estimate of such costs shall be furnished to the applicant by the Bureau.

(3) If the applicant elects to donate services, such services shall be conducted and performed pursuant to the criteria established by the Director of the Bureau of Land Management.

(b) Section 211(b) of the Act, provides for conveyance, under the Recreation and Public Purposes Act (43 U.S.C. 869), of lands other than islands determined by the Secretary by survey to be public lands of the United States erroneously or fraudulently omitted from the original surveys. An applicant may be required to donate money, services, or a combination thereof for such survey. The procedures contained in § 9185.2-3(a) of this title shall be followed.

Guy R. Martin,

Assistant Secretary of the Interior.

July 11, 1979.

[FR Doc. 79-22171 Filed 7-17-79; 8:45 am]

LIB

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2540

[Circular No. 2447]

Qualification of Applicants; Correction

SUPPLEMENTARY INFORMATION: The FR Doc. 79–22171 amending 43 CFR Part 2540 published in the **Federal Register** on July 18, 1979, (44 FR 41793), is corrected by changing the reference in the last sentence of § 2547.1(a) from "2342" to "2742".

James Curlin,
Acting Assistant Secretary of the Interior.
September 24, 1979.

[FR Doc. 79–30194 Filed 9–27–79; 8:45 am]

Correction published in 44 F.R. 55876, September 28, 1979.

Circular Distribution List

GPO 853 - 333

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4

[Circular No. 2448]

Department Hearings and Appeals Procedures; Grazing Procedures

Under the authority of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315, 315a–315r), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Part 4, Subtitle A, Title 43 of the Code of Federal Regulations is amended as set forth below.

1. Section 4.410 is amended by changing the reference from "Part 4110" to "Part 4100."

2. Sections 4.470 through 4.478 are amended to read as follows:

Grazing Procedures (Inside and Outside Grazing Districts)

§ 4.470 Appeal to administrative law judge; motion to dismiss.

(a) Any applicant, permittee, lessee, or any other person whose interest is adversely affected by a final decision of the authorized officer may appeal to an administrative law judge by filing his appeal in the office of the authorized officer within 30 days after receipt of the decision. The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision of the authorized officer is in error. All grounds of error not stated shall be considered as waived, and no such waived ground of error may be presented at the hearing unless ordered or permitted by the administrative law judge.

(b) Any applicant, permittee, lessee, or any other person who, after proper notification, fails to appeal a final decision of the authorized officer within the period prescribed in the decision, shall be barred thereafter from challenging the matters adjudicated in that final decision.

(c) When separate appeals are filed and the issue or issues involved are common to two or more appeals, they may be consolidated for purposes of hearing and decision.

(d) The authorized officer shall promptly forward the appeal to the State Director. Within 30 days after his receipt of the appeal the State Director may file on behalf of the authorized officer a written motion, serving a copy thereof upon the appellant, requesting that the appeal be dismissed for the reason that it is frivolous, the appeal was filed late, the errors are not clearly and concisely stated, the issues are immaterial, the issue or issues were included in a prior final decision from which no timely appeal was made, or all issues involved therein have been previously adjudicated in an appeal involving the same preference, the same parties or their predecessors in interest. The appellant may file a written answer within 20 days after service of the motion upon him with the State Director. The appeal, motion, the proofs of service (see § 4.401(c)), and the answers will be transmitted to the Hearings Division, Office of Hearings and Appeals, Salt Lake City, Utah. An administrative law judge, shall rule on the motion, and, if the motion is sustained, dismiss the appeal by written order.

§ 4.471 Time and place of hearing; notice; intervenors.

At least 30 days before the date set by the administrative law judge the authorized officer will notify the appellant of the time and place of the hearing within or near the district. Any other person who in the opinion of the authorized officer may be directly affected by the decision on appeal will also be notified of the hearing; such person may himself appear at the hearing, or by attorney, and upon a proper showing of interest, may be recognized by the administrative law judge as an intervenor in the appeal.

§ 4.472 Authority of administrative law judge.

(a) The administrative law judge is vested with the duty and general authority to conduct the hearing in an orderly, impartial, and judicial manner, including authority to subpoena witnesses, recognize intervenors, administer oaths and affirmations, call and question witnesses, regulate the course and order of the hearing, rule upon offers of proof and the relevancy of evidence, and to make findings of fact, conclusions of law, and a decision. The administrative law judge shall have authority to take or to cause depositions to be taken. Subpoenas, depositions, the attendance of witnesses, and witness and deposition fees shall be governed by § 4.26 of the general rules in Subpart B of this part, to the extent such regulations are applicable.

(b) The administrative law judge also may grant or order continuances, and set the times and places of further hearings. Continuances shall be granted in accordance with § 4.452–3 add "."

§ 4.473 Service.

Service of notice or other documents required under this subpart shall be governed by §§ 4.413 and 4.422. Proof of such service shall be filed in the same office where the notice or document was filed within 15 days after such service, unless filed with the notice or document.

§ 4.474 Conduct of hearing; reporter's fees; transcript.

(a) The appellant, the State Director or his representative, and recognized intervenors will stipulate so far as possible all material facts and the issue or issues involved. The administrative law judge will state any other issues on which he may wish to have evidence presented. Issues which appear to the administrative law judge to be unnecessary to a proper disposition of the case will be excluded; but the party asserting such issue may state briefly for the record the substance of the proof which otherwise would have been offered in support of the issue. Issues not covered by the appellant's specifications of error may not be admitted except with the consent of the State Director or his representative, unless the administrative law judge rules that such issue is essential to the controversy and should be admitted. The parties will then be given an opportunity to submit offers of settlement and proposals of adjustment for the consideration of the administrative law judge and of the other parties.

(b) Unless the administrative law judge orders otherwise, the State Director or his representative will then make the opening statement, setting forth the facts leading to the appeal. Upon the conclusion of the opening statement, the appellant shall present his case, consistent with his specifications of error. (In the case of a show cause, the State Director shall set forth the facts leading to the issuance of the show cause notice and shall present

Published in 44 F.R. 41790, July 18, 1979 - Effective August 17, 1979

Circular Distribution List

his case following the opening statement.) Following the appellant's presentation, or upon his failure to make such presentation, the administrative law judge, upon his own motion or upon motion of any of the parties, may order summary dismissal of the appeal with prejudice because of the inadequacy or insufficiency of the appellant's case, to be followed by a written order setting forth the reasons for the dismissal and taking such other action under this subpart as may be proper and warranted. An appeal may be had from such order as well as from any other final determination made by the administrative law judge.

(c) In the absence or upon denial of such motion the State Director or his representative and recognized intervenors may present evidence if such a presentation appears to the administrative law judge to be necessary for a proper disposition of the matters in controversy, adhering as closely as possible to the issues raised by the appellant. All oral testimony shall be under oath or affirmation, and witnesses shall be subject to cross-examination by any party to the proceeding. The administrative law judge may question any witness whenever it appears necessary. Documentary evidence will be received by the administrative law judge and made a part of the record, if pertinent to any issue, or may be entered by stipulation. No exception need be stated or noted and every ruling of the administrative law judge will be subject to review on appeal. The party affected by an adverse ruling sustaining an objection to the admission of evidence, may insert in the record, as a tender of proof, a brief written statement of the substance of the excluded evidence; and the opposing party may then make an offer of proof in rebuttal. The administrative law judge shall summarily stop examination and exclude testimony on any issue which he determines has been adjudicated previously in an appeal involving the same preference and the same parties or their predecessors in interest, or which is obviously irrelevant and immaterial to the issues in the case. At the conclusion of the testimony the parties at the hearing shall be given a reasonable opportunity, considering the number and complexity of the issues and the amount of testimony, to submit to the administrative law judge proposed findings of fact and conclusions of law, and reasons in support thereof, or to stipulate to a waiver of such findings and conclusions.

(d) The reporter's fees shall be borne by the Government. Each party shall pay for any copies of the transcript obtained by him. Unless the parties stipulate to a summary of the evidence, the Government will file the original copy of the transcript with the case record.

§ 4.475 Findings of fact and decision by administrative law judge: notice; submission to Board of Land Appeals for decision.

(a) As promptly as possible after the time allowed for presenting proposed findings and conclusions, the administrative law judge shall make findings of fact and conclusions of law unless waiver has been stipulated, and shall render a decision upon all material issues of fact and law presented on the record. In doing so he may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. The reasons for the findings, conclusions, and decisions made shall be stated, and along with the findings, conclusions, and decision, shall become a part of the record in any further appeal. A copy of the decision shall be sent by certified mail to the appellant and all intervenors, or their attorneys of record.

(b) The Board of Land Appeals may require, in any designated case, that the administrative law judge make only a recommended decision and that such decision and the record be submitted to the Board for consideration. The recommended decision shall meet all the requirements for a decision set forth in paragraph (a) of this section. The Board shall then make the decision in the case. This decision shall include such additional findings and conclusions as do not appear in the recommended decision and the record shall include such rulings on proposed findings and conclusions submitted by the parties as have not been made by the administrative law judge.

§ 4.476 Appeals to the Board of Land Appeals.

Any party affected by the administrative law judge's decision, including the State Director, has the right to appeal to the Board of Land Appeals, in accordance with the procedures and rules set forth in this Part 4.

§ 4.477 Effect of decision suspended during appeal.

(a) An appeal shall suspend the effect of the decision from which it is taken pending final action on the appeal unless the decision appealed from is made immediately effective.

(b) Consistent with the provisions of § 4160.3 of this title, (1) the authorized officer may provide initially in his decision that it shall be in full force and effect pending decision on an appeal therefrom; (2) the administrative law judge may provide in the decision on an appeal before such officer that it shall be in full force and effect pending decision on any further appeal; (3) the Board may provide by interim order that any decision from which an appeal is taken shall be in full force and effect pending final decision on the appeal. Any action taken by the authorized officer pursuant to a decision shall be subject to modification or revocation by the administrative law judge or the Board upon an appeal from the decision. In order to insure the exhaustion of administrative remedies before resort to court action, a decision which at the time of its rendition is subject to appeal to a superior authority in the Department shall not be considered final so as to be agency action subject to judicial review under 5 U.S.C. section 704, unless it has been made effective pending a decision on appeal in the manner provided in this paragraph.

§ 4.478 Conditions of decision action.

(a) *Record as basis of decision; definition of record.* No decision shall be rendered except on consideration of the whole record or such portions thereof as may be cited by any party or by the State Director and as supported by and in accordance with the reliable, probative, and substantial evidence. The transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision.

(b) *Effect of substantial compliance.* No adjudication of grazing preference will be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of Part 4100 of this title.

Guy R. Martin,
Assistant Secretary of the Interior.
July 13, 1979.

Doc 79-22170 Filed 7-17-79; 8:45 am]

GPO 852-383

Legal Library

DEPT. OF THE INTERIOR
BUR. OF LAND MANAGEMENT
1979 DEC 6 AM 10 00
MONTANA STATE OFFICE
BILLINGS, MONTANA

DEPARTMENT OF THE INTERIOR
Bureau of Land Management

43 CFR Parts 221, 3400, 3410, 3420, 3422, 3430, 3440, 3450, 3460, 3470, 3500, 3501, 3502, 3503, 3504, 3507, 3511, 3520, 3521, 3524, 3525, 3526, 3550, 3564, 3565, 3566, and 3568

Coal Management; Federally Owned Coal; Correction

[Circular No. 2449]

PART 3400—COAL MANAGEMENT—GENERAL

1. The last sentence of § 3400.4(a), page 42609, is corrected as follows:

§ 3400.4 Responsibilities.

(a) * * * If the region is a multi-state region under the jurisdiction of more than one Bureau of Land Management State Office, each State Director shall designate a Bureau of Land Management representative for each state.

* * * * *

PART 3420—COMPETITIVE LEASING

§ 3420.2-3 [Amended]

2. Section 3420.2–3(e)(3)(i)(B), page 42618, is corrected as follows:

* * * * *

(e) * * *

(3) * * *

(i) * * * or (B) the ownership of the surface estate of qualified surface owners who expressed such a preference is transferred to surface owners who are not qualified surface owners or to qualified surface owners who subsequently provide consent to such mining; and * * *.

3. The first sentence of § 3420.3–2(k), page 46620, is corrected as follows:

* * * * *

(k) Two years after the adoption of each new regional lease sale schedule, the Secretary shall review the final regional leasing target which applies to that schedule through the process set out in paragraphs (b) through (j) of this section and, if necessary, revise the final regional leasing target for the final 2 years of the sale schedule. * * *

4. Section 3420.4–2(d), page 42621, is corrected as follows:

§ 3420.4-2 Expressions of leasing interest.

* * * * *

(d) Entities qualifying for public body leasing opportunities as defined in section 3420.1–4(b)(1) of this title shall make their intentions known through submission of expressions of leasing interest when called for by the Secretary.

* * * * *

PART 3430—NONCOMPETITIVE LEASING

5. Section 3430.3–2(c), page 42630, is corrected as follows:

§ 3430.3-2 Environmental analysis.

* * * * *

(c) The environmental assessment or environmental impact statement shall be prepared containing recommendations on lease terms and special stipulations regarding:

* * * * *

6. Section 3432.1(b), page 42632, is corrected as follows:

§ 3432.1 Application.

* * * * *

(b) The lessee shall file the application for modification in the Bureau of Land Management State Office having jurisdiction over the lands involved (43 CFR Subpart 1821), describing the additional lands desired, the lessee's needs or reasons for such modification, and the reasons why the modification would be to the advantage of the United States.

7. Section 3437.1–1(b)(2), page 42634, is corrected as follows:

§ 3437.1-1 Qualified exchange proponents.

* * * * *

(b) * * *

(2) Who have had or whose lessees have had the regulatory authority not issue a surface mining permit because the holding is in an alluvial valley floor, and who otherwise meet the criteria of the provisions in section 510(b)(5) of the Surface Mining Control and Reclamation Act. Any such person may propose an exchange under this subpart.

Published in 44 F.R. 56339, October 1, 1979 - Effective October 1, 1979
Circular Distribution List

GPO 853-335

PART 3470—COAL MANAGEMENT PROVISIONS AND LIMITATIONS

8. The table of contents of Subpart 3472, page 42643, is corrected as follows:

Subpart 3472—Lease Qualification Requirements

Sec.
3472.1 Qualifications.
3472.1–1 Qualified applicants and bidders.
3472.1–2 Special leasing qualifications.
3472.1–3 Acreage limitations.
3472.2 Filing of qualification statements.
3472.2–1 Sole party in interest statement.
3472.2–2 Contents of qualification statement.
3472.2–3 Signature of applicant.
3472.2–4 Special qualifications heirs, and devisees (estates).
3472.2–5 Special qualifications, public bodies.

9. The titles to §§ 3472.1, 3472.1–1, 3472.1–2 and 3472.1–3, page 42644, are corrected as follows:

§ 3472.1 Qualifications.

§ 3472.1–1 Qualified applicants and bidders.

§ 3472.1–2 Special leasing qualifications.

§ 3472.1–3 Acreage limitations.

10. Section 3474.2, page 42649, is correrected as follows:

§ 3474.2 Type of bond required.

(a) A lease bond for each lease, conditioned upon compliance with all terms and conditions of the lease, except reclamation within a permit area, shall be furnished in the amount determined by the authorized officer. The amount of the bond may be changed if the authorized officer considers such a change to be proper and necessary.

(b) For exploration licenses, a bond shall be furnished in accordance with § 3410.3–5 of this title.

11. In the amendment portion of the rulemaking, page 42650, the phrase "PART 3041 (Deleted)" is corrected to read "Subpart 3041 (Deleted)".

PART 3500—LEASING OF MINERALS OTHER THAN OIL AND GAS; GENERAL

12. In the amendment portion of the rulemaking, page 42650, § 3501.2–3 is corrected as follows:

§ 3501.2–3 [Amended]

10. 43 CFR 3501.2–3(a) is amended by the deletion of the word "coal" so that the subsection begins "Phosphate * * *

13. In the amendment portion of the rulemaking, page 42650, § 3502.1–1 is corrected as follows:

§ 3502.1–1 [Amended]

12. 43 CFR 3502.1–1 is amended by the deletion of paragraph (c).

13. 43 CFR Part 3502 is amended by deleting §§ 3502.2–1 and 3502.2–2 and revising § 3502.2 to read as follows:

§ 3502.2 Individuals—Statement of citizenship.

If the applicant is an individual, he/she shall submit with each application for permit or lease a statement over his/her own signature setting forth the applicant's citizenship.

14. In the amendment portion of the rulemaking, page 42650, § 3502.9 is corrected as follows:

§ 3502.9 and 3502.9–1 [Deleted]

14. 43 CFR 3502.9 and 3502.9–1 are deleted in their entirety.

15. In the amendment portion of the rulemaking, page 42650, § 3504.5–1 is corrected as follows:

§ 3504.5–1, 3504.6–1, 3504.7–1 [Amended]

22. 43 CFR 3504.5–1, .6–1 and .7–1 are amended by the deletion of the word 'coal'.

PART 3560—SPECIAL LEASING ACTS

16. In the amendment portion of the rulemaking, page 42651, § 3564.6 is corrected as follows:

§ 3564.6 [Amended]

59. 43 CFR 3564.6 is amended by the deletion of the word 'coal in Part 211 and to'.

60. The third sentence of 43 CFR 3564.6 is amended to read, 'Leases for minerals subject to this subpart not listed in the preceding sentence shall be governed by the operating regulations in 30 CFR Part 231.'

17. In the amendment portion of the rulemaking, page 42652, § 3566.2 is corrected as follows:

§ 3566.2 [Amended]

62. In 43 CFR 3566.2, '30 CFR Part 211' is amended to read '30 CFR Part 231'.

James Curlin,
Acting Assistant Secretary of the Interior.
September 26, 1979.

[FR Doc. 79–30347 Filed 9–28–79; 8:45]

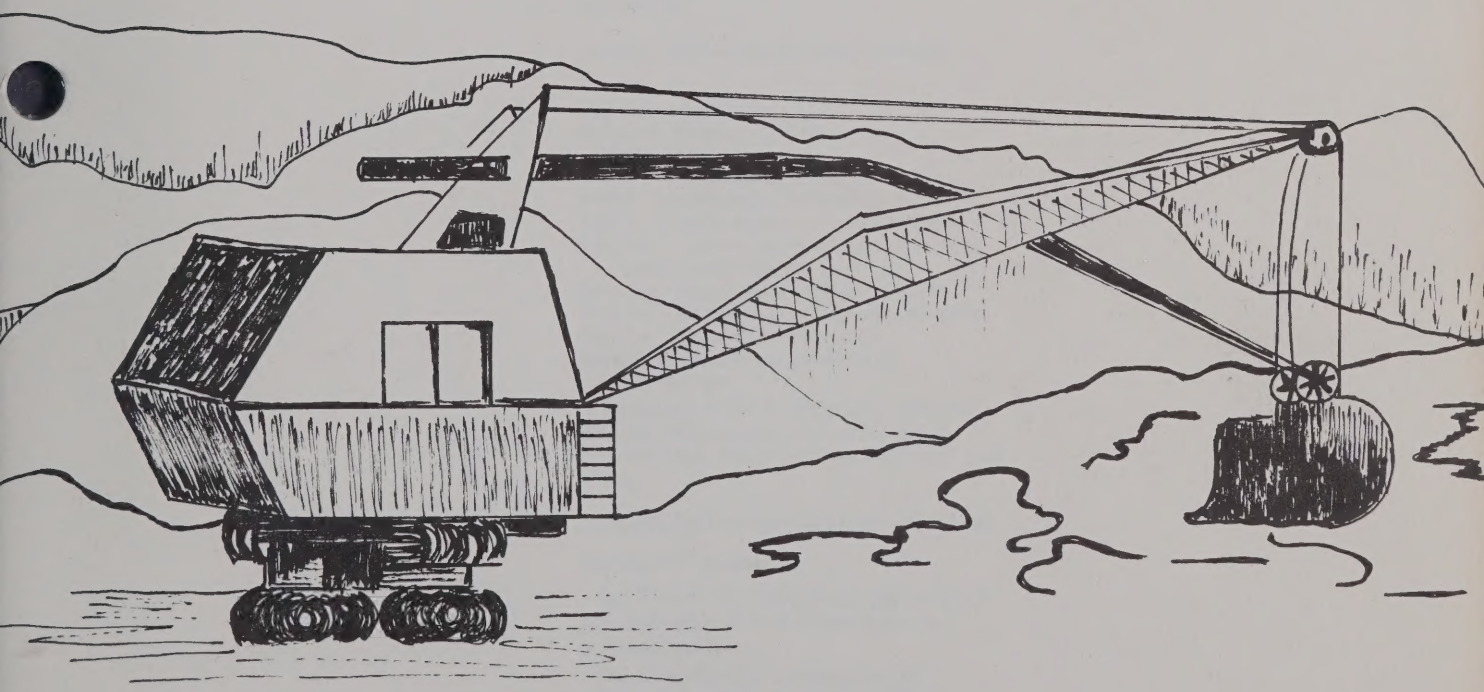
Circular No. 2449

REGULATIONS PERTAINING TO:

COAL MANAGEMENT

FEDERALLY OWNED COAL

43 CFR 3400



U.S. Department of the Interior *Bureau of Land Management*

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 221, 3400, 3410, 3420, 3422, 3430, 3440, 3450, 3460, 3470, 3500, 3501, 3502, 3503, 3504, 3507, 3511, 3520, 3521, 3524, 3525, 3526, 3550, 3564, 3565, 3566, and 3568

[Circular No. 2449]

Coal Management; Federally Owned Coal

Under the authority of the Mineral Leasing Act of 1920, the Mineral Leasing Act for Acquired Lands, the Federal Land Policy and Management Act of 1976, the Surface Mining Control and Reclamation Act and the Multiple Mineral Development Act, Subchapter C, Chapter II, Title 43 of the code of Federal Regulations is amended as set forth below.

1. The addition of a new Group 3400 and Part 3400 as follows:

Group 3400—Coal Management

PART 3400—COAL MANAGEMENT—GENERAL

Subpart 3400—Introduction—General

Sec.
3400.0–3 Authority.
3400.0–4 Responsibilities.
3400.0–5 Definitions.
3400.1 Multiple development.
3400.2 Lands subject to leasing.
3400.3 Limitations on authority to lease.
3400.3–1 Consent or conditions of surface management agency.
3400.3–2 Department of Defense lands.
3400.3–3 Department of Agriculture lands.
3400.3–4 Trust protection lands.
3400.4 Federal/state government cooperation.

Authority: 30 U.S.C. 181 et seq.; 30 U.S.C. 351–359; 30 U.S.C. 521–531; 30 U.S.C. 1201 et seq.; 42 U.S.C. 7101 et seq.; and 43 U.S.C. 1701 et seq.

Subpart 3400—Introduction—General

§ 3400.0–3 Authority.

(a) These regulations are issued under the authority of and to implement provisions of:

(1) The Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 et seq.).

(2) The Mineral Leasing Act for Acquired Lands of August 7, 1947, as amended (30 U.S.C. 351–359 et seq.).

Published 44 F.R. 42608, July 19, 1979 - Effective date changed
44 F.R. 45946, August 6, 1979 - Effective August 6, 1979
Circular Distribution List

(3) The Federal Land Policy and Management Act of 1976, October 21, 1976 (43 U.S.C. 1701 et seq.).

(4) The Surface Mining Control and Reclamation Act of 1977, August 3, 1977 (30 U.S.C. 1201 et seq.).

(5) The Multiple Mineral Development Act of August 13, 1954 (30 U.S.C. 521–531 et seq.).

(6) The Department of Energy Organization Act of August 4, 1977 (42 U.S.C. 7101 et seq.).

(7) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(8) The Federal Coal Leasing Amendments Act of 1976, as amended (90 Stat. 1083–1092).

(9) The Act of October 30, 1978 (92 Stat. 2073–2075).

(b) Specific citations of authority in subsequent subparts of this Group 3400 are to authorities from which the subpart is chiefly derived or which the subpart chiefly implements.

§ 3400.0–4 Responsibilities.

(a) The Bureau of Land Management has the responsibility to:

(1) Assess the unsuitability or the acceptability of Federal lands for leasing and development, or to enter into memoranda of understanding to authorize other Federal surface management agencies to conduct such assessments on lands they administer;

(2) Issue, modify and readjust leases, and serve as the lessor's office of record for and take appropriate action on transfers, relinquishments and similar lease transactions;

(3) Ensure that fair market value is received for rights to extract Federal coal before issuing a lease;

(4) Issue and administer all use authorizations for facilities related to coal development on Bureau of Land Management administered lands outside the permit area;

(5) Determine, in consultation with the Office of Surface Mining Reclamation and Enforcement, the appropriate post mining land use of Bureau of Land Management administered lands on which surface coal mining operations will be conducted;

(6) Include terms in each lease to protect nonmineral and noncoal mineral resources and to ensure reclamation of mined lands to the applicable standards;

(7) Recommend judicial action to cancel leases for noncompliance with lease terms;

(8) Consult with other surface management agencies and surface owners when they are involved in or affected by coal management actions that are the primary responsibility of the Bureau of Land Management;

(9) Adjudicate applications for, issue, and administer exploration licenses; and

(10) Review permit applications and advise the Office of Surface Mining Reclamation and Enforcement on measures necessary to protect other resources in the lands and to protect the interests of the holders of noncoal leases, licenses and permits.

(b) The Geological Survey has the responsibility on Federal lands to:

(1) Supervise production and coal resource recovery in the permit area;

(2) Make geologic, engineering, coal resource economic value, and maximum economic recovery determinations for coal related actions of the Department;

(3) Review and concur with mining and exploration plans, and amendments to plans on leases, to establish production and coal resource recovery requirements;

(4) Approve exploration plans and supervise exploration either under an exploration license, or on a lease outside a permit area;

(5) Deal with operators on the matters listed in paragraphs (b) (1) through (4) of this section; and

(6) Recommend tract ranking weights and factors for geologic, engineering and other coal resource criteria.

(c) The Office of Surface Mining Reclamation and Enforcement has the responsibility on Federal lands to:

(1) Approve mining and reclamation permit applications;

(2) Ensure that mining operations are consistent with environmental criteria and permit requirements;

(3) Assure compliance with permits in the conduct of mining and reclamation operations;

(4) Accept and release performance bonds;

(5) Approve applications for exploration within a permit area;

(6) Deal with operators during mining operations on the matters listed in paragraph (c) (1) through (5) of this section;

(7) Recommend tract ranking weights and factors for reclaimability;

(8) Negotiate, in consultation with the Bureau of Land Management and Geological Survey, and recommend for Secretarial approval, cooperative agreements with the states to establish the authority of state regulatory agencies over surface coal mining and reclamation operations on a lease; and

(9) Designate lands, in response to petitions, as unsuitable for all or certain methods of surface coal mining operations, reject petitions, and terminate designations of lands.

(d) The Fish and Wildlife Service has the responsibility on Federal lands to:

(1) Protect and conserve endangered and threatened species, migratory birds, and eagles;

(2) Recommend lands unsuitable for leasing due to fish, wildlife, and related ecological values;

(3) Recommend tract ranking factors and weights, for fish and wildlife;

(4) Recommend lease stipulations related to fish and wildlife values;

(5) Review and recommend postmining land uses of surface mined lands as they relate to the creation or maintenance of fish and wildlife values;

(6) Review exploration plans and mining plans to make recommendations about their potential impacts on fish and wildlife values; and

(7) Review projects authorized under Group 3400 of this title that will result in the impoundment, diversion or control of streams or other bodies of water, for the purposes of mitigating or avoiding

adverse impacts on fish and wildlife values.

§ 3400.0–5 Definitions.

As used in this part:

(a) "Alluvial valley floor" means unconsolidated, stream-laid deposits holding streams with water availability sufficient for subirrigation or flood irrigation agricultural activities. This definition does not encompass upland areas generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion; deposits laid down by unconcentrated runoff or slope wash, together with talus or other mass movement accumulations; and windblown deposits.

(b) "Authorized officer" means any employee of the Bureau of Land Management delegated the authority to perform the duty described in the section in which the term is used.

(c) "Bonus" means that value in excess of the rentals and royalties that accrues to the United States because of coal resource ownership that is paid as part of the consideration for receiving a lease.

(d) "Bypass coal" means an isolated coal deposit that cannot, for the foreseeable future, be mined economically and in an environmentally sound manner either separately or as part of any logical mining unit other than that of the applicant for either an emergency lease under the provisions of section 3425.1–4 of this title or a lease modification.

(e) "Casual use" means activities which do not ordinarily lead to any appreciable disturbance or damage to lands, resources or improvements, for example, activities which do not involve use of heavy equipment or explosives and which do not involve vehicle movement except over already established roads and trails.

(f) "Certificate of bidding rights" means a nontransferable right granted by the Secretary to apply the fair market value of a relinquished coal or other mineral lease or right to a preference right coal or other mineral lease as a credit against the bonus bid or bids on a competitive lease or leases acquired at a lease sale or sales, or as a credit against the payment required for a coal lease modification.

(g) "Coal deposits" mean all Federally-owned coal deposits, except those held in trust for Indians.

(h) "Coal resource economic value (CREV)" means the value of the coal resource in a proposed lease in its best operational and market application.

(i) "Commercial quantities" as used in paragraph (m) means:

(1) For any lease issued after August 4, 1976, an amount of production equal to one percent of the LMU reserves; or

(2) For any lease issued before August 4, 1976, an amount of production equal to one-fortieth of the LMU reserves.

(j) "Continued operation" means the production of coal equal to one percent of the LMU reserves for each of the first two years following the achievement of diligent development, and an average annual amount of one percent of the LMU reserves thereafter. The average annual amount shall be computed on a three year basis, and the three-year period for which the average shall be computed shall consist of the year in question and the two preceding years.

(k) "Contiguous" means having at least one point in common, including cornering tracts.

(l) "Department" means the United States Department of the Interior.

(m) "Diligent development" means (1) for any lease issued after August 4, 1976, the timely preparation for and initiation of coal production from the LMU of which the lease is a part so that coal is actually produced in commercial quantities by the end of the tenth year from the effective date of the lease; or

(2) For any lease issued before August 4, 1976, the timely preparation for and initiation of coal production from the LMU so that coal is actually produced in commercial quantities before June 1, 1986, except that the period of time during which production of coal in commercial quantities must be achieved may be extended as provided in 43 CFR 3475.4.

(n) "Director" means the Director of the Bureau of Land Management unless otherwise indicated.

(o) "Environmental assessment" means a document prepared by the responsible Federal agency consistent with 40 CFR 1508.9.

(p) "Exploration" means drilling, excavating, and geological, geophysical or geochemical surveying operations designed to obtain detailed data on the physical and chemical characteristics of coal deposits and their environment including the strata above and below the deposits, or the hydrologic conditions associated with the deposit.

(q) "Exploration license" means a license issued by the authorized officer to permit the licensee to explore for coal on unleased Federal lands.

(r) "Exploration plan" means, in relation to an exploration license, a plan prepared in sufficient detail to show the location and type of exploration to be conducted, environmental protection procedures, present and proposed roads, and reclamation and abandonment procedures to be followed upon completion of operations.

(s) "Fair market value" means that amount in cash, or on terms reasonably equivalent to cash, for which in all probability the coal deposit would be sold or leased by a knowledgeable owner willing but not obligated to sell or lease to a knowledgeable purchaser who desires but is not obligated to buy or lease.

(t) "Federal lands" mean lands owned by the United States, without reference to how the lands were acquired or what Federal agency administers the lands, including mineral estates or coal estates underlying private surface, but excluding lands held by the United States in trust for Indians, Aleuts or Eskimos.

(u) "Governmental entity" means a Federal or State agency or a political subdivision of a State, including a county or a municipality, or any corporation acting primarily as an agency or instrumentality of a State, which produces electrical energy for sale to the public.

(v) "Interest" in a lease, application or bid means: any record title interest, overriding royalty interest, working interest, operating rights or option, or any agreement covering such an interest; any claim or any prospective or future claim to an advantage or benefit from a lease; and any participation or any defined or undefined share in any increments, issues, or profits that may be derived from or that may accrue in any manner from the lease based on or pursuant to any agreement or understanding existing when the application was filed or entered into while the lease application or bid is pending.

(w) "Intertract bidding competition" means a lease sale method where tracts containing more reserves in total than the Department intends to lease in that sale are offered for sale, and each bidder competes against other bidders on the same tract for which he bids and against bidders on the other tracts offered in the same sale.

(x) "Known Recoverable Coal Resource Area" or "KRCRA" means an area, including Federal lands which meet minimum standards for recoverable coal deposits in accordance with accepted mining practices, as determined by the Director, Geological Survey. The Federal lands in a KRCRA are classified for coal leasing.

(y) "Lease" means a Federal lease, issued under the coal leasing provisions of the mineral leasing laws, which authorizes the exploration for and extraction of coal. In provisions of this

group that also refer to Federal leases for minerals other than coal, the term "Federal coal lease" may be used.

(z) "Lease bond" means the bond or equivalent security given the Department to assure payment of all obligations under a lease, exploration license, or license to mine, and to assure that all aspects of the mining operation other than reclamation operations on a lease are conducted in conformity with the approved mining or exploration plan. This is the same as the "Federal lease bond" referred to in 30 CFR 742.11(a).

(aa) "Licensee" means the holder of an exploration license.

(bb) "License to mine" means a license issued under the provisions of Part 3440 to mine coal for domestic use.

(cc) "Logical Mining Unit" or "LMU" means an area of coal land that can be developed and mined in an efficient, economical, and orderly manner with due regard for the conservation of coal reserves and other resources. An LMU may consist of one or more leases and may include intervening or adjacent non-Federal lands, but all lands in an LMU must be contiguous, under the effective control of a single operator, and capable of being developed and operated as a unified operation with complete extraction of the LMU reserves within 40 years from the date of first approval of a mining plan for that LMU. No LMU approved after August 4, 1976, shall exceed 25,000 acres, including both Federal and non-Federal coal deposits.

(dd) "Logical Mining Unit reserves" mean the sum of (1) estimated recoverable reserves under Federal lease in the LMU, and (2) estimated non-Federal recoverable reserves in the LMU. The LMU reserves associated with a Federal lease are the LMU reserves estimated as of the effective date of the LMU, of which that lease is a part, except that the LMU reserves of this section may be adjusted by the Mining Supervisor whenever he approves a modification of the LMU boundaries or whenever significant new information becomes available concerning the amount of such reserves.

(ee) "Maximum economic recovery" or "MER" means that all portions of the coal deposits within the lease tract shall be mined that have a private incremental cost of recovery (including reclamation, safety and opportunity costs) less than or equal to the market value of the coal.

(ff) "Mining method evaluation" means a written comparison of mining method alternatives used to determine maximum economic recovery.

(gg) "Mineral leasing laws" mean the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.), and the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359).

(hh) "Mining plan" means a mining and reclamation operations plan that fully complies with the requirements of the Mineral Leasing Act of 1920 as amended, the Surface Mining Control and Reclamation Act of 1977, and all other applicable laws and regulations.

(ii) "Mining Supervisor" means the Area Mining Supervisor, Conservation Division, U.S. Geological Survey, or the District Mining Supervisor, or a subordinate acting under the Supervisor's direction.

(jj) "Mining unit" means an area containing technically recoverable coal that will feasibly support a commercial mining operation. The coal may either be Federal coal or be both Federal and non-Federal coal.

(kk) "Operator" means a lessee, licensee or one conducting operations on a lease or exploration license under the authority of the lessee or licensee.

(ll) "Participate" means to have, or take part or share with others, in an exploration license.

(mm) "Permit" means the document that authorizes surface coal mining and reclamation operations on Federal lands issued either by the Director of the Office of Surface Mining Reclamation and Enforcement or, where a cooperative agreement pursuant to section 523 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1273), has been executed by the state regulatory authority (30 CFR Part 741), after approval of a mining plan by the Secretary.

(nn) "Permit area" means the area of land and water within the boundaries of the permit which are designated on the permit application maps, as approved by the regulatory authority. This area shall include, at a minimum, all areas which are or will be affected by the surface coal mining and reclamation operations during the term of the permit.

(oo) "Public bodies" means Federal and state agencies; political subdivisions of a State, including counties and municipalities; rural electric cooperatives and similar organizations; and nonprofit corporations controlled by any such entities.

(pp) "Qualified surface owner" means the natural person or persons (or corporation, the majority stock of which is held by a person or persons) who:

(1) Hold legal or equitable title to the surface of split estate lands;

(2) Have their principal place of residence on the land, or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by surface mining operations; or receive directly a significant portion of their income, if any, from such farming and ranching operations; and

(3) Have met the conditions of paragraphs (1) and (2) of this subsection for a period of at least 3 years, except for persons who gave written consent less than 3 years after they met the requirements of both paragraphs (1) and (2) of this section. In computing the three year period the authorized officer shall include periods during which title was owned by a relative of such person by blood or marriage if, during such periods, the relative would have met the requirements of this subsection.

(qq) "Reserves" means recoverable portion of coal deposits which are commercially producible under existing technology and economics. In these regulations, the terms "reserves" and "recoverable reserves" are used interchangeably.

(rr) "Secretary" means the Secretary of the Interior or his authorized representative.

(ss) "Sole party in interest" means a party who is and will be vested with all legal and equitable rights under a lease, bid, or an application for a lease. No one is a sole party in interest with respect to a lease or bid in which any other party has any interest.

(tt) "Split estate" means land in which the ownership of the surface is held by persons, including governmental bodies, other than the Federal government and the ownership of underlying coal is, in whole or in part, reserved to the Federal government.

(uu) "Substantial legal and financial commitments" means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal handling and preparation, extraction or storage facilities and other capital intensive activities. Costs of acquiring the coal in place or of the right to mine it without an existing mine are not sufficient to constitute "substantial legal and financial commitments".

(vv) "Surface coal mining operations" means activities conducted on the surface of lands in connection with a surface coal mine or surface operations and surface impacts incident to an underground mine, as defined in section 701(28) of the Surface Mining Control and Reclamation Act (30 U.S.C. 1291(28)).

(ww) "Surface management agency" means the Federal agency with

jurisdiction over the surface of Federally owned lands containing coal deposits.

(xx) "Surface Mining Officer" means the field representative authorized to act for the Director of the Office of Surface Mining, Reclamation and Enforcement.

(yy) "Valid existing rights" as used in section 3461.1 of this title is defined in 30 CFR 761.5.

(zz) "Written consent" means the document or documents that a qualified surface owner has signed that: (1) Permit a coal operator to enter and commence surface mining of coal; (2) describe any financial or other consideration given or promised in return for the permission, including in-kind considerations; (3) describe any consideration given in terms of type or method of operation or reclamation for the area; (4) contain any supplemental or related contracts between the surface owner and any other person who is a party to the permission; and (5) contain a full and accurate description of the area covered by the permission.

§ 3400.1 Multiple development.

The granting of an exploration license, a license to mine or a lease for the prospecting, development, or production of coal deposits shall preclude neither the issuance of prospecting permits or mineral leases for prospecting, development or production of deposits of other minerals in the same land with suitable stipulations for simultaneous operation, nor the allowance of applicable entries, locations, or selections of leased lands with a reservation of the mineral deposits to the United States.

§ 3400.2 Lands subject to leasing.

The Secretary may issue coal leases on all Federal lands except:

(a) Lands in:

(1) The National Park System;

(2) The National Wildlife Refuge System;

(3) The National Wilderness Preservation System;

(4) The National System of Trails;

(5) The National Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act;

(6) Incorporated cities, towns, and villages;

(7) The Naval Petroleum Reserves, the National Petroleum Reserve in Alaska, and oil shale reserves; and

(8) National Recreation Areas designated by law;

(b) Tide lands, submerged coastal lands within the Continental Shelf adjacent or littoral to any part of land within the jurisdiction of the United States; and

(c) Land acquired by the United States for the development of mineral deposits, by foreclosure or otherwise for resale, or reported as surplus property pursuant to the provisions of the Surplus Property Act of 1944 (50 U.S.C. App. 1622).

§ 3400.3 Limitations on authority to lease.

§ 3400.3-1 Consent or conditions of surface management agency.

Leases for land, the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior, may be issued only with the consent of the head or other appropriate official of the other agency having jurisdiction over the lands containing the coal deposits, and subject to such conditions as that officer may prescribe to insure the use and protection of the lands for the primary purpose for which they were acquired or are being administered.

§ 3400.3-2 Department of Defense lands.

The Secretary may issue leases with the consent of the Secretary of Defense on acquired lands set apart for military or naval purposes only if the leases are issued to a governmental entity which:

(a) Produces electrical energy for sale to the public;

(b) Is located in the state in which the leased lands are located; and

(c) Has production facilities in that state, and will use the coal produced from the lease within that state.

§ 3400.3-3 Department of Agriculture lands.

Subject to the provisions of § 3400.3-1, the Secretary may issue leases that authorize surface coal mining operations on Federal lands within the National Forest System, provided that such leases may not be issued on lands within a national forest unless the tract is assessed to be acceptable for all or certain stipulated methods of surface coal mining operations under the provisions of Criterion No. 1 in § 3461.1 of this title.

§ 3400.3-4 Trust protection lands.

The regulations in this group do not apply to the leasing and development of coal deposits held in trust by the United States for Indians. See 43 CFR 3400.0-5(t). Regulations governing those deposits are found in 25 CFR Chapter I.

§ 3400.4 Federal/state government cooperation.

(a) In order to implement the requirements of law for Federal-state cooperation in the management of Federal lands, a Department-state regional coal team shall be established for each coal production region defined pursuant to § 3420.3-1(a). The team shall consist of a Bureau of Land Management field representative for each state in the region, who will be the Bureau of Land Management State Director, or, in his absence, his designated representative; the Governor of each state or, in his absence, his designated representative; and a representative appointed by and responsible to the Director of the Bureau of Land Management. The Director's representative shall be chairman of the team. If the region is a multi-state region under the jurisdiction on more than one Bureau of Land Management State Office, the State Director shall designate a Bureau of Land Management representative for each state.

(b) Each regional coal team shall consider and suggest policy for regional leasing target setting, tract delineation, and site specific analysis in the coal production region; guide and review tract ranking; and conduct the selection and sale scheduling process in order to recommend regional lease sale alternatives to be analyzed in the regional lease sale environmental impact statement and to be recommended to the Secretary. Each team member may submit a lease sale schedule alternative which shall be treated equally in the draft and final regional lease sale environmental impact statement.

(c) Upon completion of the final regional lease sale environmental impact statement, the chairman shall submit the recommendations of the regional coal team to the Director. Any disagreement as to the recommendations among the team shall be documented and submitted by the chairman along with the team recommendation. The Director shall submit the final regional environmental impact statement to the Secretary for his decision, together with the recommendations of the team and any recommendations the Director may wish to make after review of the final statement.

(d) The regional coal team shall also serve as the forum for Department/state consultation and cooperation in all other major Department coal management program decisions in the region, concerning preference right lease applications, public body and small business setaside leasing, emergency leasing and exchanges.

(e) Participation in the proceedings of a regional coal team need not be limited to the designated representatives of the

Bureau of Land Management State Directors or the Governors. Additional representatives of state and Federal agencies may participate directly in team meetings or indirectly in the preparation of material to assist the team at any time at the request of the team chairperson. At a minimum, participation shall be solicited from state and Federal agencies with special expertise in topics considered by the team or with direct responsibilities in areas potentially affected by coal management decisions. However, at every point in the deliberations the official team spokespersons for the Bureau of Land Management and for the Governors shall be those designated under paragraph (a) of this section.

(f) If a state declines to participate under this section in the coal-related activities of the Department:

(1) the Department may take action authorized in Group 3400 of this title in a coal production region wholly within such a state without forming a regional coal team, and

(2) the Department may form a regional coal team without a representative of the Governor of such a state in any multi-state coal production region.

PART 3410—EXPLORATION LICENSES

Subpart 3410—Exploration Licenses

Sec.

3410.0–1 Purpose.
3410.0–2 Objective.
3410.0–3 Authority.
3410.0–4 Responsibilities.
3410.1 Exploration licenses—Generally.
3410.1–1 Lands subject to exploration licenses.
3410.1–2 When an exploration license is required.
3410.2 Prelicensing procedures.
3410.2–1 Application for an exploration license.
3410.2–2 Environmental analysis.
3410.2–3 Cultural resources.
3410.2–4 Threatened or endangered species.
3410.2–5 Surface management agency.
3410.2–6 Substantial disturbance.
3410.3 Exploration licenses.
3410.3–1 Issuance and termination of an exploration license.
3410.3–2 Limitations on exploration licenses.
3410.3–3 Operating regulations.
3410.3–4 Surface protection and reclamation.
3410.3–5 Bonds.
3410.4 Collection and submission of data.
3410.5 Use of surface.

Authority: 30 U.S.C. 181 et seq.

Subpart 3410—Exploration Licenses

§ 3410.0–1 Purpose.

This subpart provides for the issuance of licenses to explore for coal deposits subject to disposal under Group 3400.

§ 3410.0–2 Objective.

The objective of this subpart is to allow private parties singularly or jointly to explore coal deposits to obtain geological, environmental, and other pertinent data concerning the coal deposits.

§ 3410.0–3 Authority.

(a) These regulations are issued under the authority of the statutes listed in § 3400.0–3 of this title.

(b) These regulations primarily implement section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 201(b)).

§ 3410.0–4 Responsibilities.

(a) The Bureau of Land Management exercises the Secretary's discretionary authority to determine whether exploration licenses are to be issued. The Bureau is also responsible for issuing and cancelling exploration licenses and terminating the period of liability of a licensee under any bond he may have posted as a condition of license issuance. The regulations in this subpart shall be administered by the Director of the Bureau of Land Management through the State Director and the authorized officer, subject to the supervisory authority of the Secretary. The Bureau of Land Management State Office having jurisdiction over the lands involved (43 CFR Subpart 1821) is also the Office of Record.

(b) The Geological Survey exercises the Secretary's authority regarding operations conducted within the area covered by the license, including responsibility for all geological, economic, and engineering determinations.

(c) The authorized officer; in consultation with the Gelogical Survey, and where appropriate, the surface management agency, the Fish and Wildlife Service, and the surface owner, if other than the United States, formulates the requirements to be incorporated in exploration licenses for the protection of the surface resources and for reclamation.

(d) The Geological Survey, after consultation with the authorized officer, and where appropriate, the surface management agency and the surface owner, if other than the United States, shall provide technical review and approval of the exploration plan. The Geological Survey shall recommend bonding requirements to the Bureau of Land Management. Upon the completion of exploration operations, the Geological Survey shall recommend termination of the period of the licensee's liability under any bond posted.

§ 3410.1 Exploration licenses—Generally.

§ 3410.1–1 Lands subject to exploration licenses.

(a) Exploration licenses may be issued for:

(1) Lands administered by the Secretary that are subject to leasing, § 3400.2;

(2) Lands administered by the Secretary of Agriculture through the Forest Service or other agency that are subject to leasing, § 3400.2;

(3) Lands which have been conveyed by the United States subject to a reservation to the United States of the mineral or coal deposits, to the extent that those deposits are subject to leasing under § 3400.2; and

(4) Acquired lands set apart for military or naval purposes.

(b) No exploration license shall be issued for lands included in an existing coal lease.

§ 3410.1–2 When an exploration license is required.

(a) No person may conduct exploration activities for commercial purposes, including sale of data acquired during exploration, on lands subject to this subpart without an exploration license.

(b) An exploration license shall not be required for casual use for other than commercial purposes.

(c) Exploration activities conducted without an exploration license in violation of this section shall constitute a trespass, and shall be subject to the provisions of 43 CFR 9239.5–3(f).

§ 3410.2 Prelicensing procedures.

§ 3410.2–1 Application for an exploration license.

(a) Exploration license applications shall be submitted at the Bureau of Land Management State Office having jurisdiction over the lands covered in the application (43 CFR Subpart 1821). The applications shall be subject to the following requirements:

(1) No specified form of application is required.

(2) An area in a public land survey state for which an application is filed shall be described by legal description or, if on unsurveyed lands, by metes and

bounds, in accordance with § 3471.1–1(d)(1) of this title. An application for an exploration license on acquired lands shall describe the area according to the description in the deed or document by which the United States acquired title in accordance with § 3471.1–1(d)(2) of this title.

(3) Each application shall contain three copies of an exploration plan which complies with the requirements of 30 CFR 211.10(a).

(4) Each application and its supporting documents shall be filed with a nonrefundable filing fee (43 CFR 3473.2).

(5) Exploration license applications shall normally cover no more than 25,000 acres in a reasonably compact area and entirely within one state. An application for an exploration license covering more than 25,000 acres must include a justification for an exception to the normal acreage limitation.

(b) Any person qualified to hold a lease under the provisions in § 3472.1 of this title may apply for an exploration license.

(c) Nothing in this subpart shall preclude the authorized officer from issuing a call for expressions of leasing interest in an area containing exploration licenses or applications for exploration licenses.

(d) Applicants for exploration licenses shall be required to provide an opportunity for other parties to participate in exploration under the license on a pro rata cost sharing basis.

(1) Immediately upon the filing of an application for an exploration license the applicant shall publish a "Notice of Invitation," approved by the authorized officer, once every week for 2 consecutive weeks in at least one newspaper of general circulation in the area where the lands covered by the license application are situated. This notice shall contain an invitation to the public to participate in the exploration under the license. Copies of the Notice of Invitation shall be filed with the authorized officer at the time of publication by the applicant, for posting in the proper Bureau of Land Management Office and for Bureau of Land Management's publication of the Notice of Invitation in the **Federal Register**.

(2) Any person who seeks to participate in the exploration program contained in the application shall notify the authorized officer and the applicant in writing within 30 days after the publication in the **Federal Register**. The authorized officer may require modification of the original exploration plan to accommodate the legitimate exploration needs of persons seeking to participate, and to avoid the duplication of exploration activities in the same area, or may notify the person seeking to participate that the person should file a separate application for an exploration license.

(e) An application to conduct exploration which could have been conducted as a part of exploration under an existing or recent coal exploration license may be rejected.

§ 3410.2–2 Environmental analysis.

(a) Before an exploration license may be issued, the authorized officer shall prepare an environmental assessment of the potential effects of the proposed exploration on the natural and socio-economic environment of the affected area. The environmental assessment shall be prepared in coordination with the Geological Survey review and approval of the exploration plan.

(b) If the authorized officer determines that an environmental impact statement is required by Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), a statement shall be prepared prior to the decision whether to issue the exploration license.

§ 3410.2–3 Cultural resources.

If lands listed or eligible for inclusion in the National Register of Historic Places contain cultural resources which might be affected by any activity under an exploration license, no exploration license for such land shall be authorized until after compliance with section 106 of the National Historic Preservation Act (16 U.S.C. 470f). Other cultural resource values shall also be protected pursuant to section 105 of the National Historic Preservation Act.

§ 3410.2–4 Threatened or endangered species.

If the proposed exploration would be likely to jeopardize the continued existence of a threatened or endangered species of fauna or flora or destroy or cause adverse modification to its critical habitat, no exploration license for such lands shall be issued. In making this determination the authorized officer shall consult any other surface management agency, and, if the presence of any threatened or endangeed species or its habitat is suspected or known, with the Fish and Wildlife Service in accordance with 50 CFR Part 402.

§ 3410.2–5 Surface management agency.

The authorized officer may issue an exploration license covering lands the surface of which is under the jurisdiction of any Federal agency other than the Bureau of Land Management only in accordance with those conditions prescribed by the surface management agency concerning the use and protection of the nonmineral interests in those lands.

§ 3410.2–6 Substantial disturbance.

No exploration license shall be issued if exploration under it would result in substantial disturbance to the natural land surface and improvements. Substantial disturbance means any disturbance which would cause significant and lasting degradation to the land or injury to improvements, or any disturbance other than that necessary to determine the nature of the overlying strata and the depth, thickness, shape, grade, quality or hydrologic conditions of the coal deposit.

§ 3410.3 Exploration licenses.

§ 3410.3–1 Issuance and termination of an exploration license.

(a) The authorized officer has the discretion to issue an exploration license or to reject the application therefor under this subpart.

(b) An exploration license shall become effective on the date specified by the authorized officer as the date when exploration activities may begin. An exploration license shall not be valid for more than two years from its effective date.

(c) The exploration plan approved by Geological Survey shall be attached and made a part of each exploration license.

(d) Subject to the continued obligation of the licensee and the surety company to comply with the terms and conditions of the exploration license, the exploration plan, and the regulations, a licensee may relinquish an exploration license for all or any portion of the lands covered by it. A relinquishment shall be filed in the Bureau of Land Management State Office in which the original application was filed. See 43 CFR Subpart 1821.

(e) An exploration license may be revoked by the authorized officer for noncompliance with its terms and conditions, the exploration plan, or the regulations, after the authorized officer has notified the licensee of the violation(s) in writing and the licensee has failed to correct the violation(s) within the period prescribed in the notice.

(f) Should a licensee request a modification to the exploration plan, the Mining Supervisor, with the concurrence of the authorized officer, and where appropriate the surface management agency, may approve the modification if geologic or other conditions warrant. If

modification of the exploration plan could result in substantial disturbance to the natural land surface or damage to improvements, the authorized officer, after consultation with the Mining Supervisor, and where appropriate, the surface management agency, may adjust the terms and conditions of the license to mitigate such disturbance or damage. Unless the licensee concurs in the adjusted terms and conditions of the license, the modification of the exploration plan shall not be approved.

(g) When unforeseen conditions that could result in sustantial disturbance to the natural land surface or damage to the environment or improvements are encountered, or when geologic or other physical conditions warrant a modification in the approved exploration plan, (1) the authorized officer, after consultation with the Mining Supervisor, and where appropriate, the surface management agency, may adjust the terms and conditions of the exploration license, or (2) the Mining Supervisor, after consultation with the authorized officer and where appropriate, the surface management agency, may direct adjustment in the exploration plan. If the licensee does not concur in the adjustment of the terms and conditions of the exploration license and exploration plan, he may, under 43 CFR Part 4, appeal the decision modifying the license, or he may relinquish the exploration license.

(h) Exploration licenses shall not be extended. Exploration operations may not be conducted after the exploration license has expired. The licensee may apply for a new exploration license as described in § 3410.3–1. A new exploration license may be issued simultaneously with the termination of the existing exploration license.

§ 3410.3–2 Limitations on exploration licenses.

(a) The issuance of exploration licenses for an area shall not preclude the issuance of a Federal coal lease under applicable regulations for that area. If such a lease is issued for lands included in an exploration license, the authorized officer shall cancel the exploration license on the effective date of the lease for those lands which are common to both.

§ 3410.3–3 Operating regulations.

The licensee shall comply with the provisions of the operating regulations of the Geological Survey (30 CFR Part 211). Copies of the operating regulations may be obtained from the Mining Supervisor. Authorized representatives of the Secretary and, where appropriate the surface management agency shall be permitted to inspect the premises and operations. The licensee shall allow the free ingress and egress of Government officers and other persons using the land under authority of the United States.

§ 3410.3–4 Surface protection and reclamation.

(a) The authorized officer shall include in each exploration license requirements and stipulations to protect the environment and associated natural resources and to ensure reclamation of the land disturbed by exploration.

(b) The approved exploration plan shall not authorize substantial disturbance of the natural land surface or damage to improvements.

(c) The authorized officer may issue an exploration license for Federal lands underlying private surface. The bond amount, when the exploration license will embrace such lands, shall reflect any agreement between the license applicant and the surface owner with respect to compensation for operations on the surface of the lands in the exploration license.

§ 3410.3–5 Bonds.

(a) Bonding provisions in subpart 3474 of this chapter apply to this subpart.

(b) Prior to issuing an exploration license, the authorized officer, after consultation with the Mining Supervisor and, where appropriate, the surface management agency and the surface owner, shall insure that the amount of the bond or bonds to be furnished is sufficient to assure compliance with the terms and conditions of the explorations license, exploration plan and regulations. In no event shall the amount of such bond be less than $5,000.

(c) Upon completion of exploration and reclamation activities that are in compliance with the terms and conditions of the exploration license, the exploration plan, and the regulations, or upon discontinuance of exploration operations and completion of such reclamation as may be needed to the satisfaction of the authorized officer and, where appropriate, the surface management agency, the authorized officer shall terminate the period of liability of the bond. Where the surface of the land being explored is privately owned, the authorized officer shall not terminate the period of liability under the bond until each surface owner has notified the authorized officer, in writing, that the surface has been reclaimed in a satisfactory manner. Should the licensee and any surface owner be unable to agree on the adequacy of the reclamation, the authorized officer shall make the final determination. The period of liability under the bond shall be terminated after it is determined that the terms and conditions of the exploration license, the exploration plan, and the regulations have been met.

§ 3410.4 Collection and submission of data.

(a) The authorized officer may require the applicant to collect ground and surface water data that are available to the licensee in the conduct of the approved exploration plan.

(b) In addition, the licensee shall furnish to the Mining Supervisor copies of all data (including, but not limited to, geological, geophysical, and core drilling analyses) obtained during exploration. The licensee shall submit such data and the methods by which the data were gathered, at such time and in such form as required by the Mining Supervisor. All data shall be considered confidential and not made public until the areas involved have been leased or until the Mining Supervisor determines that public access to the data would not damage the competitive position of the licensee, whichever comes first. (30 CFR 211.6; 43 CFR 2.20.)

§ 3410.5 Use of surface.

(a) A licensee shall be entitled to use for exploration purposes only the surface area of the lands in the exploration license that is authorized in the exploration plan.

(b) Operations under these regulations shall not unreasonably interfere with or endanger operations authorized under any other Act or regulation.

(c) The licensee shall comply with all applicable Federal, state and local laws and regulations, including the regulations in Group 3000 of this title, including Part 3460, and 30 CFR Part 211.

PART 3420—COMPETITIVE LEASING

Subpart 3420—Competitive Leasing

Sec.

3420.0–1 Purpose.
3420.0–2 Objectives.
3420.0–3 Authority.
3420.0–6 Policy.
3420.1 Procedures.
3420.1–1 General.
3420.1–2 Lands subject to evaluation for leasing.
3420.1–3 Known Recoverable Coal Resource Areas.
3420.1–4 Special leasing opportunities.
3420.1–5 General requirements for land use planning.
3420.2 Land use plans prepared by the Bureau of Land Management.
3420.2–1 Preparation of a land use plan.

Sec.
3420.2-2 Coal resource information.
3420.2-3 Areas acceptable for further consideration for leasing.
3420.2-4 Hearing requirements.
3420.2-5 Consultation with Federal surface management agencies.
3420.2-6 Consultation with states and Indian tribes.
3420.2-7 Identification of lands as acceptable for further consideration.
3420.3 Regional production goals and leasing targets.
3420.3-1 General.
3420.3-2 Evaluation of coal needs.
3420.3-3 Use of final regional leasing targets.
3420.3-4 Environmental analysis.
3420.4 Activity planning—The leasing process.
3420.4-1 Area identification process.
3420.4-2 Expressions of leasing interest.
3420.4-3 Preliminary tract delineation.
3420.444 Regional tract ranking, selection, and scheduling.
3420.4-5 Environmental analysis.
3420.4-6 Public meetings on proposed tracts.
3420.5 Final consultations.
3420.5-1 Timing of consultation.
3420.5-2 Consultation with surface management agencies.
3420.5-3 Consultation with Governors.
3420.5-4 Consultation with Indian tribes.
3420.5-5 Consultation with the Attorney General.
3420.6 Qualified surface owner consent considerations.
3420.6-1 Receipt and consideration of written consent.
3420.6-2 Announcement of tracts under consideration.
3420.7 Adoption of final regional lease sale schedule.
3420.7-1 Announcement.
3420.7-2 Revision.

Subpart 3422—Lease Sales

3422.1 Economic evaluation.
3422.1-1 Mineral evaluation and comments on fair market value and maximum economic recovery.
3422.1-2 Estimated fair market value determination.
3422.2 Notice of sale.
3422.3 Sale procedures.
3422.3-1 Conduct of sale.
3422.3-2 Other bidding systems.
3422.3-3 Unsurveyed lands.
3422.3-4 Consultation with the Attorney General.
3422.4 Award of lease.

Subpart 3425—Leasing on Application

3425.0-1 Purpose.
3425.0-2 Objective.
3425.0-6 Policy.
3425.1 Application for lease.
3425.1-1 Where filed.
3425.1-2 Contents of application.
3425.1-3 Qualifications of the applicant.
3425.1-4 Emergency leasing.
3425.1-5 Leasing outside coal production regions.
3425.1-6 Hardship leases.
3425.1-7 Preliminary data.
3425.1-8 Rejection of applications.
Sec.
3425.2 Land use plans.
3425.3 Environmental analysis.
3425.4 Consultation and sale procedures.
3425.5 Lease terms.

Subpart 3427—Split Estate Leasing

3427.0-1 Purpose.
3427.0-3 Authority.
3427.0-7 Scope.
3427.1 Coal deposits subject to consent.
3427.2 Procedures.
3427.3 Validation of information.
3427.4 Pre-existing consents.

Authority: 30 U.S.C. 181 et seq.; 30 U.S.C. 351-359; 30 U.S.C. 521-531; 30 U.S.C. 1201 et seq.; 42 U.S.C. 7101 et seq.; 43 U.S.C. 1701 et seq.; and 15 U.S.C. 631-644.

Subpart 3420—Competitive Leasing

§ 3420.0-1 Purpose.

This subpart sets forth how the Department will conduct competitive leasing of rights to extract Federal coal.

§ 3420.0-2 Objectives.

The objectives of these regulations are to establish policies and procedures for considering development of coal deposits through a leasing system involving land use planning and environmental assessment processes; to ensure that an adequate supply of Federal coal is developed efficiently in compliance with laws, planning processes, and other safeguards designed to protect society and the environment; to ensure that coal deposits are leased at their fair market value; and to ensure that coal deposits are developed in consultation, cooperation, and coordination with the public, state and local governments, Indian tribes and involved Federal agencies.

§ 3420.0-3 Authority.

(a) The regulations in this part are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) The regulations in this Part implement: (1) primarily section 2(a) of the Mineral Leasing Act of 1920, as amended by Sections 2 and 3 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 201(a)); and (2) the Small Business Act of 1953, as amended (15 U.S.C. 631 et seq.).

§ 3420.0-6 Policy.

All leases except those issued under the provisions of Part 3430 of this title shall be issued competitively. There shall be special opportunity lease sales for qualified public bodies and for small businesses. Before each sale, the Department shall evaluate and compare the method or methods of mining that will achieve the maximum economic recovery of the resource. The Department shall receive fair market value for all coal leased.

§ 3420.1 Procedures.

§ 3420.1-1 General.

Competitive leasing is a component of the Federal coal management program and consists of four principal elements: Comprehensive land use planning; establishment of regional leasing targets; tract delineation, ranking, selection, and scheduling; and lease sale. The application of unsuitability criteria pursuant to subpart 3461 of this title for mining is an integral part of land use planning. All competitive lease sales under this subpart shall be initiated by the Secretary; applications for a competitive lease will be accepted only when filed under the provisions of Subpart 3425 of this chapter.

§ 3420.1-2 Lands subject to evaluation for leasing.

All lands subject to coal leasing under the mineral leasing laws are subject to evaluation under this subpart (43 CFR 3400.2).

§ 3420.1-3 Known recoverable coal resource areas.

No area outside a designated Known Recoverable Coal Resource Area (KRCRA) shall be leased under this subpart. Each KRCRA shall be formally designated by publication in the **Federal Register.**

§ 3420.1-4 Special leasing opportunities.

(a) The Secretary shall, under the procedures established in this subpart, including § 3420.4 of this title, reserve and offer a reasonable number of lease tracts through competitive lease sales open only to a restricted class of potential bidders. Except for the limitation on bidding contained in paragraph (b) of this section, all requirements in this subpart apply equally to special leasing opportunities, including the requirement that coal be leased at its fair market value.

(b) Special leasing opportunities shall be provided for two classes of potential lessees:

(1) Public bodies.

(i) Only public bodies with a definite plan for producing energy for their own use or for their members or customers shall bid for leases designated as special leasing opportunities for public bodies. To qualify as a definite plan, a plan must clearly state the intended use of the coal and have been approved by the governing board of the public body submitting the plan. In the event an electric generating station which will produce energy for the public body is

either jointly owned with or participated in by others, or both, the definite plan shall assure that the public body's proportionate part of the energy produced is utilized pursuant to this paragraph.

(ii) Each public body shall submit evidence of qualification (43 CFR 3472.2–5(a)) as part of its expression of leasing interest or upon submission of a bid if no expression of leasing interest is made.

(iii) The Secretary may designate, during the process of preparing a regional lease sale schedule, certain coal lease tracts for special leasing opportunities for public bodies only if a public body has submitted an expression of leasing interest under § 3420.4–2, requesting that the procedures of this section apply.

(iv) Leases issued under this section to public bodies may be assigned only to other public bodies, or to a person who will mine the coal on behalf of and for the use of the public body, or to a person for the limited purpose of creating a security interest in favor of a lender who agrees to be obligated to mine the coal on behalf of the public body.

(2) Small businesses.

(i) When necessary to comply with the requirements of the Small Business Act, the Secretary shall designate a reasonable number of tracts for special leasing opportunities for businesses qualifying under 13 CFR Part 121.

(ii) Leases issued under this section may be assigned only to other small businesses qualifying under 13 CFR Part 121.

(c) Potential lessees qualifying for special leasing opportunities may participate in competitive lease sales not designated as special leasing opportunities and shall not be required to submit the evidence and information required specifically for a special leasing opportunity to participate.

§ 3420.1–5 General requirements for land use planning.

(a) The Secretary may not issue a lease for coal development under this part unless the lands containing the coal deposits have been included in a comprehensive land use plan or land use analysis and unless the sale is compatible with, and subject to, any relevant stipulations, guidelines and standards set out in that plan or analysis.

(b)(1) The Bureau of Land Management shall prepare comprehensive land use plans and land use analysis for lands it administers in accordance with either the standards in paragraph (c) of this section (but subject to the limitation in paragraph (e) of this section) or the provisions of § 3420.2 of this title.

(2) The Department of Agriculture or any other Federal agency with surface management authority over lands subject to leasing shall prepare comprehensive land use plans and land use analyses for lands it administers, in accordance with the standards in subsection (c) of this section, or in accordance with such general regulations as it may adopt for the preparation of comprehensive land use plans, except as provided in the following paragraph.

(3) The Secretary may lease in an area where it is found either that there is no Federal interest in the surface or that the coal deposits in an area are insufficient to justify the costs of a Federal land use plan, if:

(i) The lands have been included in a comprehensive land use plan prepared, authorized or recognized by the state in which the lands are located, which shall govern Federal coal leasing recommendations affecting surface management except for those decisions for which the Secretary is responsible under the Surface Mining Control and Reclamation Act of 1977, and those recommendations that are in conflict with Federal law; or

(ii) The Secretary has completed, in accordance with the standards in subsection (c) of this section or in accordance with group 1600 of this title, a land use analysis.

(c) In order to qualify as the basis for issuing a lease, the comprehensive land use plan or land use analysis shall have:

(i) considered a range of present and potential resource values and uses in accordance with the principles of multiple use and sustained yield;

(ii) used necessary professional disciplines in the analysis of resource development proposals;

(iii) identified critical environmental areas, if any;

(iv) reflected available, relevant data commensurate with anticipated conflicts in values and potential uses, and with likely levels and impacts of such uses;

(v) developed and analyzed alternative proposals for multiple resource development and use;

(vi) analyzed the significance of values that would be affected by proposed actions in terms of local, regional and national perspectives, consistent with agency directives; and

(vii) been formulated in consultation with appropriate state and local governments and agencies and with the opportunity for public participation, including a public hearing if requested by an adversely affected party.

(d) The Secretary, surface management agency or planning entity within a state shall supplement any plan or analysis to be used for coal activity planning to conform to subsection (c) of this section, if the plan:

(i) does not contain an unsuitability assessment as provided in § 3420.2–3(c) of this title, the Secretary shall conduct such an assessment;

(ii) does not contain the results of the surface owner consultation required under § 3420.2–3(e) of this title, the Secretary shall complete such consultation;

(iii) does not assess the amount of coal recoverable by surface and deep mining operations, the Secretary, surface management agency or planning entity within a state shall make such an assessment; or

(iv) was not prepared in conformity with subsection (c) of this section.

Any assessment or supplementation to the plan or analysis under this subsection shall provide the opportunity for public comment.

(e) After December 31, 1984, activity planning under § 3420.4 of this title may not be initiated with respect to any coal deposits administered by the Bureau of Land Management unless the area is included in:

(i) a comprehensive land use plan or land use analysis prepared in conformity with the regulations in group 1600 of this title; or

(ii) a comprehensive land use plan prepared under §§ 3420.1–5(b) (2) or (3)(i) of this title.

(f) In an area of Federal lands not covered by a completed comprehensive land use plan or scheduled for comprehensive land use planning, a member of the public may petition the appropriate Bureau of Land Management State Office for a land use analysis for coal related uses of the land as provided for in this group.

§ 3420.2 Land use plans prepared by the Bureau of Land Management.

§ 3420.2–1 Preparation of a land use plan.

The Bureau of Land Management shall prepare comprehensive land use plans (termed resource management plans) and land use analyses as provided in Group 1600 of this chapter.

§ 3420.2–2 Coal resource information.

A comprehensive land use plan or land use analysis shall contain an assessment of the amount of coal recoverable by either surface or underground mining operations or both.

§ 3420.2-3 Areas acceptable for further consideration for leasing.

(a) The major land use planning decision concerning the coal resource shall be the identification of areas acceptable for further consideration for leasing, which shall be identified by the screening procedures in subsections (b) through (e) below, and the additional planning considerations in subsections (f) and (g) below. Each screening procedure in subsections (b) through (e) below shall be applied only to those lands still identified as acceptable for further consideration for leasing after application of the screening procedure in each preceding subsection.

(b)(1) Only those areas subject to evaluation for leasing (§ 3420.1–2) that have high or moderate development potential coal deposits shall be considered acceptable for further consideration for leasing.

(2) This determination shall be based generally on the Geological Survey's Coal Resource Occurrence-Coal Development Potential (CRO/CDP) maps. If CRO/CDP maps are not available, the Geological Survey shall use other available data sources to estimate coal development potential for the surface management agency. If other data sources are used, the same criteria for designating coal deposits as high or moderate development potential shall be used. Coal companies, state governments and the general public are encouraged to submit information to the Geological Survey for use in the CRO/CDP mapping program at any time.

(3) Coal companies, state governments, and members of the public may submit non-confidential coal geology and economic data during the earlier inventory phase of planning to the Bureau of Land Management State Office conducting the planning. Where such information is determined to indicate significant development potential for an area not shown to be of moderate or high development potential in the CRO/CDP maps, the area shall be considered moderate development potential and shall not be excluded from further consideration and application of the remaining screens in the land use planning process.

(c) The authorized officer shall, using the unsuitability criteria and procedures set out in Subpart 3461, review Federal lands to assess where there are areas unsuitable for all or certain stipulated methods of coal mining. The unsuitability assessment shall be consistent with any decision of the Office of Surface Mining Reclamation and Enforcement to designate lands unsuitable or to terminate a designation in response to a petition.

(d) Multiple land use decisions shall be made which may eliminate additional coal deposits from further consideration for leasing to protect other resources values of a locally important or unique nature not included in the unsuitability criteria discussed in subsection (c) of this section.

(e)(1) While preparing a comprehensive land use plan or land use analysis, the Bureau of Land Management shall consult with all surface owners who meet the criteria in paragraphs (1) and (2) of § 3400.0–5(pp) of this title, and whose lands overlie coal deposits, to determine preference for or against mining by other than underground mining techniques.

(2) For the purposes of this paragraph, any surface owner who has previously granted written consent to any party to mine by other than underground mining techniques shall be deemed to have expressed a preference in favor of mining. Where a significant number of surface owners in an area have expressed a preference against mining those deposits by other than underground mining techniques, that area shall be considered acceptable for further consideration for leasing only for development by underground mining techniques. In addition, the area may be considered acceptable for further consideration for leasing for development by other than underground mining techniques if there are no acceptable alternative areas available to meet the regional leasing target.

(3) An area eliminated from further consideration by this subsection may be considered acceptable for further consideration for leasing for mining by other than underground mining techniques if:

(i) the number of surface owners who have expressed their preference against mining by other than underground methods is reduced below a significant number because (A) surface owners who expressed their preference against such mining subsequently have given written consent for such mining, or (B) the ownership of the surface estate of surface owners who expressed such a preference is transferred to surface owners who are not surface owners or to surface owners who subsequently provided consent to such mining; and

(ii) the land use plan is amended accordingly.

(f) The land use plan may provide for impact thresholds as described in Group 1600 of this title to manage coal development. Where a threshold level would be reached, the Bureau of Land Management shall halt, suspend or condition further consideration of the areas otherwise considered acceptable for further consideration for leasing.

(g) Where the areas acceptable for further consideration for leasing within a planning unit, in the judgment of the local land manager clearly contain more reserves than are likely to be needed for leasing until the evaluation of the plan conducted under § 1601.5–9 of this title, or analysis, the plan or analysis may specify broad areas greater than 60,000 acres for earliest consideration for leasing, if any is to be done.

§ 3420.2-4 Hearing requirements.

(a) The Bureau of Land Management shall conduct a public hearing on the proposed comprehensive land use plan or land use analysis if it involves the potential for coal leasing before it is adopted if such a hearing is requested by any person who is or may be adversely affected by the adoption of the plan. A hearing conducted under Group 1600 of this chapter may fulfill this requirement.

(b) The authorized officer conducting the hearing shall: (1) publish a notice of the hearing in a newspaper of general circulation at least once in each of two consecutive weeks in the affected geographical area;

(2) provide an opportunity for testimony by anyone who so desires; and

(3) record the proceedings of the hearing.

§ 3420.2-5 Consultation with Federal surface management agencies.

Where a Federal surface management agency other than the Bureau of Land Management administers limited areas overlying Federal coal within the boundaries of a comprehensive land use plan or land use analysis being prepared by the Bureau of Land Management, the Bureau of Land Management shall consult with the other agency to obtain its recommendations as to the acceptability for further consideration for leasing of the land the other agency administers.

§ 3420.2-6 Consultation with States and Indian tribes.

Before adopting a comprehensive land use plan or land use analysis that makes any formal assessment of lands acceptable for further consideration for leasing, the Bureau of Land Management or other surface management agency shall consult with the state Governor and the state agency charged with the responsibility for maintaining the state's unsuitability program (43 CFR 3461.4–1).

Where a tribal government administers areas within or near the boundaries of a comprehensive land use plan or land use analysis being prepared by the Bureau of Land Management, the Bureau shall consult with the tribal government to obtain its recommendations concerning the unsuitability assessment.

§ 3420.2-7 Identification of lands as acceptable for further consideration.

Identification of lands as acceptable for further consideration for leasing will be made in the adoption of a comprehensive land use plan or land use analysis. Any lands identified as acceptable may be further considered for leasing under § 3420.4 of this title.

§ 3420.3 Regional production goals and leasing targets.

§ 3420.3-1 General.

(a)(1) The coal production regions to which this section applies shall be set out by notice in the **Federal Register.** They may be changed, or their boundaries altered, by publication in the **Federal Register.**

(2) If any region so established, wholly east of the 100th meridian, contains insufficient Federal coal deposits to justify treating coal leasing in the entire region through activity planning under § 3420.4 of this title, such a notice may prescribe areas within such a region in which activity planning is unlikely to occur in the foreseeable future and in which applications to lease shall be accepted under § 3425.1-5 of this title.

(b) The Secretary in consultation with the Secretary of the Department of Energy, affected state Governors, Indian tribes and other concerned parties shall biennially adopt regional coal production goals provided by the Department of Energy, adjusted as provided in §§ 3420.3-2 (e) and (f) of this title. The Secretary shall also establish regional leasing targets for the purposes of setting Departmental priorities, aiding the states in planning for potential future impacts of coal development, and supplying the guidance for establishing the amount of coal to be offered through proposed lease sale schedules.

§ 3420.3-2 Evaluation of coal needs.

This section sets out the process the Department shall follow in establishing regional coal needs and appropriate coal management actions.

(a) Proposed regional production goals stating the desired levels of production of various types of coal shall be established by the Department of Energy consistent with the procedures as agreed to by the Secretaries of Energy and of the Interior on production goals for energy resources on Federal lands.

(b) The Secretary shall, within 60 days of receipt of the proposed production goals, review and comment thereon to the Secretary of Energy. The Secretary shall inform the Secretary of Energy of potential policy conflicts or problems concerning, but not limited to: (1) the Department's responsibility for the management, regulation, and conservation of natural resources; (2) the capabilities of Federal lands and Federal coal resources to meet the proposed goals; and (3) the national need for coal resources balanced against the environmental consequences of developing these resources.

(c) The Secretary of Energy shall issue final production goals not more than 30 days after receipt of the Secretary's comments. In establishing or revising regional lease sale schedules, the Secretary shall be guided by these final production goals of the Department of Energy.

(d) The Department of Energy's final production goals and related production statistics of the Department of the Interior shall be provided to the regional coal teams. Each team shall consider the regional situation and recommend adjustments to the relevant regional production goal based on such factors as (1) public comment received in writing or in hearing(s) held by the team in the region, (2) state government, Bureau of Land Management State Office, Indian tribe and regional development policies, (3) administrative capacity to satisfy the indicated level of leasing based on the Department of Energy's final production goals, and (4) other information available to the regional coal teams which they believe should receive consideration by the Secretary in his review of the Department of Energy's final regional production goals. Notice of hearings held under this subsection shall be published in the **Federal Register** and in at least one newspaper of general circulation in each state in the region.

(e)(1) The Secretary shall consider the findings and recommendations of the regional coal teams and other relevant information and review the Department of Energy's final regional production goals to determine whether any adjustments thereto are necessary.

(2) The Secretary shall also establish preliminary regional leasing targets, based on: the Department of Energy's final regional production goals; recommendations of the regional coal teams about feasible regional leasing targets; and other relevant information. In establishing the preliminary regional leasing targets, the Secretary shall evaluate, at a minimum: the expected and potential production for existing coal leases; noncompetitive coal leases, non-Federal coal holdings and expected non-Federal (including Indian tribal) leasing; and the level of competition within the coal region.

Consideration shall also be given to the relative economic, social and environmental differences among the coal production regions, the comparative environmental and other benefits of developing Federal rather than non-Federal coal, and other factors as the Secretary deems appropriate. Preliminary regional leasing targets shall:

(i) reflect the difference between desired levels of production in the region and projected supplies, including supplies of specific types of coal;
(ii) be set out on the basis of coal reserve tonnages;
(iii) be for 4 years; and
(iv) take into consideration the coal that would come into production as a result of Federal leasing.

(f)(1) The Secretary shall either adopt the Department of Energy's final regional production goals or make the necessary adjustments thereto and then adopt the goals, as adjusted. Upon adoption of the Department of Energy's final regional production goals with or without adjustments, such goals, together with the reasons for adjustments, if any, shall be transmitted to the Secretary of Energy.

(2) The preliminary regional leasing targets and regional production goals as adopted with or without adjustment by the Secretary shall be published simultaneously in the **Federal Register** and in a newspaper of general circulation in each state in the region.

(g) In the process of adopting the Department of Energy's final regional production goals and establishing preliminary regional leasing targets, the Secretary may call a national conference of the regional coal teams to review their recommendations.

(h) In addition to participating in the regional hearings specified in subsection (d) of this section, the coal and utility industries, agricultural and community organizations, environmental groups Indian tribes and other concerned parties shall be afforded the opportunity to submit their views on the regional production goals, as adopted by the Secretary, and on the preliminary regional leasing targets by responding to the notice in the **Federal Register** as prescribed in subsection (f) of this section, and, if requests are received,

from the public through additional hearing(s).

(i) The Secretary shall consult with the State Governors seeking their views concerning the Department of Energy's final regional production goals, those goals as adopted by him, and the preliminary leasing targets. The Secretary shall particularly seek the Governors' views regarding the relationship between the preliminary regional leasing targets and potential social and economic effects on the State and region.

(j) Based on the consultation with State Governors, consideration of the Department of Energy's final regional production goals, as adopted, and the comments received on these goals and the preliminary regional leasing targets, and the comments received, the Secretary shall adopt final regional leasing targets for the guidance of regional coal teams as set out in § 3420.3–3 of this title.

(k) Two years after the adoption each of new regional lease sale schedule, the Secretary shall review the final regional leasing target which applies to that schedule throught the process set out in paragraphs (b) through (j) of this section and, if necessary, revise the final regional leasing target for the final 2 years of the sale schedule. If there is a new regional leasing target requiring a major change in the tracts proposed for sale, a 2 year supplement to the regional lease sale environmental impact statement shall be prepared.

(l) The regional leasing targets established for the regional lease sales in 1981 or 1982 may be established by the Secretary based on the analysis presented in the Final Environmental Statement, Federal Coal Management Program, and related analyses without regard to the provisions of paragraphs (a) through (j) of this section.

§ 3420.3–3 Use of final regional leasing targets.

(a) The final regional leasing targets shall guide the regional coal teams in the preliminary delineation, ranking, selection and scheduling of tracts for lease sale in the coal production regions.

(b) The final regional leasing targets do not represent final leasing decisions and may, with the approval of the Secretary, be revised by the regional coal teams, prior to the adoption of a lease sale schedule by the Secretary, as a result of consideration of national needs and social, economic, and environmental factors that are taken into account during the tract ranking, selection, and scheduling process. Circumstances justifying a revision of a final regional leasing target may include the following:

(1) Expressed industry interests in coal development in the region not reflected in the final regional leasing target;

(2) Expressed interests and reasons there for from a community or group of communities for or against coal development in the adjacent and surrounding areas;

(3) Expressed interests for special opportunity sales;

(4) Adjustments indicated by the success or failure of the scheduled lease sales in meeting the final regional leasing targets;

(5) An expressed desire on the part of the state or local government to shift or disperse development patterns in the region or sub-region by additional leasing, reductions in leasing, or shifts in locations of lease sales; and

(6) Results from the analyses contained in the regional lease sale environmental statement.

(c) Whether or not the regional coal team proposes a revision of the relevant final regional leasing target, one alternative analyzed in the regional lease sale environmental impact statement shall be the final leasing target established pursuant to § 3420.3–2(j) of this title.

(d) Where a regional coal team elects to propose a revision of the relevant final regional leasing target during the selection of tracts proposed for lease sale and the design of the recommended regional lease sale schedule, the team shall clearly set out the proposed revision and the reasons therefor in the regional sale environmental impact statement and request public comment on the proposed revision in the public participation process for the regional lease sale environmental impact statement. Such a proposed revision shall not become effective unless and until the Secretary approves the recommended alternative leasing target and schedule.

§ 3420.3–4 Environmental analysis.

An environmental assessment in the form of an updating of the most current environmental impact statement on the Federal coal management program shall be conducted by the Secretary if he:

(a) Determines that the regional production goals and regional leasing targets established in accordance with §§ 3420.3–2(e) and 3420.3–2(l) vary significantly from those analyzed in the most current version of the coal programmatic statement; or

(b) Determines that the tracts available for selection in the next round of the tract ranking, selection, and scheduling process (Section 3420.4–4) in any given region(s) may generate significantly different levels or types of environmental impacts than were anticipated in the most current coal programmatic environmental statement.

§ 3420.4 Activity planning—The leasing process.

§ 3420.4–1 Area identification process.

(a) This section describes the process for identifying, ranking, selecting, and scheduling lease tracts after land use planning has been completed. This process constitutes the "activity planning" aspect of the coal management program. Activity planning may occur where areas acceptable for further consideration for leasing have been identified by land use planning completed consistent with the provisions of § 3420.1–5 of this title.

(b) Split estate land otherwise acceptable for further consideration for leasing shell, upon verfication of a refusal to consent received from a qualified surface owner under § 3427.2 of this title, be deleted from further activity planning.

§ 3420.4–2 Expressions of leasing interest.

(a) A call for expressions of leasing interest may be made after areas acceptable for further consideration for leasing have been identified by land use planning completed consistent with the provisions of § 3420.1–5 of this title. The call may be made in any one, several, or all of the above mentioned areas when the Secretary determines, using the regional production goals and regional leasing targets established under § 3420.3–2 of this title, that additional Federal coal leasing may be needed to meet local, state, or national needs in the foreseeable future.

(b) Each call for expressions of leasing interest shall be published as a notice in the **Federal Register** and in at least 1 newspaper of general circulation in each affected state. This notice of request shall specify the area or areas involved, information required, the time period within which expressions may be submitted, where to write for further information and where to submit expressions.

(c) The expressions of leasing interest process provided for in this subpart is not exclusive. Any individual, business entity, governmental entity, or public body may participate in the general public participation opportunities and procedures that are part of the land use planning process which precedes the call for expressions of leasing interest.

(d) Entities qualifying for leasing public body opportunities as defined in § 3420.1–4(b)(1)of this title shall make their intentions known through submission of expressions of leasing interest when called for by the Secretary.

(e) Any expressions of leasing interest may include supportive nonproprietary data. Such data may include, but are not limited to, location and quantities and types of coal (including coking coal) desired, time frames for development, proposed uses of coal, technical coal data, commitments between private surface and coal owners and adjacent land owners or lessees, and basic development proposals. Expressions which identify quantity and quality of coal and timing of need without specifying a location shall be given as serious consideration in activity planning as those that specify a location. Data which are considered proprietary shall not be submitted as part of an expression of leasing interest.

(f) All information submitted under this subpart shall be available for public inspection and copying upon request.

§ 3420.4–3 Preliminary tract delineation.

(a) Preliminary tracts shall be delineated for analysis during ranking, selection, and scheduling. Although only unleased Federal coal deposits can be included in a lease sale, for the purpose of analysis, the preliminary tracts may include non-Federal and leased Federal as well as unleased Federal coal reserves and may include existing mining operations.

(b) In addition to expressions of leasing interest, factors to be considered in delineating preliminary tracts may include, but are not limited to:

(1) Technical coal data, including reserve tonnage, rank, sulfur content, seam thickness, and ratio of overburden to recoverable coal;

(2) Conservation considerations, including preliminary indications of maximum economic recovery, mixed land ownership patterns, and the potential formation of logical mining units; and

(3) Surface ownership, including surface owners' preferences expressed in consultation during land use planning, and the existence of written consents from qualified surface owners and their terms.

(c) The potential tracts shall be delineated in accordance with § 3471.1–2 of this title and by seam(s) or coal bed(s). More than one potential tract may be delineated for a specific coal bed or potential mining unit.

(d) When public bodies have submitted expressions of leasing interest, tracts shall be delineated when and where technically feasible for public body special leasing opportunities in accordance with § 3420.1–4 of this title.

(e) In cooperation with the Small Business Administration, tracts may be delineated when and where technically feasible for small business special leasing opportunities in accordance with § 3420.1–4 of this title.

(f) Other tracts to be used in a lease or fee exchange (43 CFR Subparts 3435, 3436, and 3437) may be delineated.

(g) A tract profile shall be formulated for each preliminary tract. The profile shall include:

(1) A summary of the information used in the delineation of the tract, and

(2) A site-specific environmental inventory and preliminary analysis.

(h) The regional coal team shall determine the location, priority, and timing of both preliminary tract delineation and site-specific environmental inventory and analysis.

§ 3420.4–4 Regional tract ranking, selection, and scheduling.

(a) If there is a final regional leasing target adopted under § 3420.3–2(j) of this title for any given region, tracts shall be ranked and selected, and a proposed lease sale schedule shall be prepared pursuant to this section. Tracts may also be ranked for other coal management purposes, such as exchanges under subparts 3425, 3436 and 3437 of this title.

(b)(1) The ranking classes shall be those of high, medium and low desirability. Three major categories of considerations shall be used in tract ranking: coal economics; impacts on the natural environment; and socio-economic impacts. The subfactors to be considered under each category shall be those determined by the regional coal team as appropriate for that region, and shall be published in the regional lease sale environmental impact statement required by § 3420.4–5 of this title. The regional coal team shall defer the ranking of any given preliminary tract for which they determine there is generally insufficient data.

(2) The regional coal teams may modify tract boundaries being ranked in order to reflect analyses conducted in developing the tract profile.

(3) The regional coal team shall solicit the recommendations of Federal and state agencies having appropriate expertise. These Federal agencies shall include but are not limited to the Department of Energy, the Fish and Wildlife Service, the Geological Survey, and the Office of Surface Mining Reclamation and Enforcement, and any Federal agency that administers the surface of any lands in a preliminary tract.

(4) Where Federal leasing decisions are likely to have impacts on lands held in trust for an Indian tribe, the regional coal management team shall solicit the recommendations of the tribe.

(c)(1) Upon completion of tract ranking, the regional coal team shall select tracts for inclusion in alternative proposed lease sale schedules or for other management purposes to be forwarded to the Secretary for final selection.

(2) The regional coal team may adjust the tract ranking in the selection process, and select tracts for scheduling from the tract ranking, using considerations including: (i) the compatibility of coal quality, coal type and market needs; (ii) cumulative environmental and socioeconomic impacts; (iii) the compatibility of reserve size and demand distribution for tracts; (iv) public opinion; (v) avoidance of future by-pass situations; and (vi) special leasing opportunity requirements.

(3) The regional coal team shall identify all those combinations of tracts which they feel may be equally desirable to meet the applicable final regional leasing target. In addition to tract combinations designed to meet the leasing target, the team may recommend tract combinations representing alternative leasing targets based on its analysis of environmental impacts or revised regional coal demand, but the reasons for all such recommendations shall be thoroughly documented.

(4) All alternative tract selections shall be subject to any restrictions placed on leasing actions by the comprehensive land use plans or land use analyses that include the tracts.

(d) A notice of intent to rank tracts shall be published in the **Federal Register** and selected newspapers of general distribution within the region before the ranking process begins. The notice shall contain a description of the tracts to be ranked and procedures under which any interested parties may become involved in the process.

(e) The results of the process, including the tract rankings, the tracts selected, the proposed schedule, and the list of ranking criteria used shall be published in the regional lease sale environmental impact statement prepared on the proposed lease sale schedule and its alternatives (Section 3420.4–5). Detailed information on each of the tracts ranked will be available for

inspection in the Bureau of Land Management State Offices that have jurisdiction over lands within the coal production region (43 CFR Subpart 1821). Those parties interested in commenting on the results of the tract ranking, selection and scheduling process shall have the opportunity to do so in the environmental impact statement process, prior to any final decision by the Secretary to adopt a regional sale schedule including any of the selected tracts.

(f) Upon the close of the comment period on the draft environmental impact statement, the regional coal team shall analyze the comments and make any revisions in the ranking, selection and scheduling analysis they feel are necessary. The team shall then forward their final recommendations of alternatives for a regional leasing schedule to the Director, consistent with § 3400.4(c) of this title.

(g) The tract ranking, selection, and scheduling process shall normally be repeated every 4 years with an update performed every 2 years, if needed, in accordance with the Secretary's determination, based on the regional production goals and regional leasing targets, that the regional lease sale schedule should be revised. The Secretary may, in consultation with the Governor(s) of the affected state(s) and surface management agencies, initiate or postpone the process to respond to considerations such as major planning updates, new preliminary tract delineations, and increases or decreases in regional leasing targets.

§ 3420.4-5 Environmental analysis.

(a) In conjuction with the tract ranking, selection and scheduling process, a regional environmental impact statement on the alternative lease sale schedules shall be prepared in accordance with the provisions of the National Environmental Policy Act. The statement shall consider both:

(1) The site-specific potential environmental impacts of each tract being considered for lease sale; and

(2) The intraregional cumulative environmental impacts of the proposed leasing action and alternatives, and other coal development activities.

(b) The regional lease sale environmental impact statement prepared for the original regional lease sale schedule shall be updated if the Secretary makes any significant alterations to that schedule not considered in the original environmental impact statement.

(c) The procedures for completion and contents of such statement are further treated in §§ 3400.4(c) and 3420.4–4 of this title.

§ 3420.4-6 Public meetings on proposed tracts.

After the draft regional lease sale environmental impact statement has been completed on alternative lease sale schedules, public meetings shall be held in the region to announce and discuss the results of the ranking, selection, and scheduling process; the alternative lease sale schedules; and the potential impacts, including proposed mitigation measures.

§ 3420.5 Final consultations.

§ 3420.5-1 Timing of consultation.

Following the release of the final regional lease sale environmental impact statement, and prior to adopting a regional lease sale schedule, the Secretary shall engage in formal consultation as specified in §§ 3420.5–2 through 3420.5–5 of this title.

§ 3420.5-2 Consultation with surface management agencies.

(a) The Secretary, for any proposed lease tract containing lands the surface of which is under the jurisdiction of any agency other than the Department, shall request that the agency: (1) consent, if it has not already done so, to the issuance of the lease (43 CFR 3400.3–1), and (2) if it consents, prescribe the terms and conditions the Secretary will impose in any lease which the head of the agency requires for the use and protection of the nonmineral interests in those lands.

(b) The Secretary may prescribe additional terms and conditions that are consistent with the terms proposed by the surface management agency to protect the interest of the United States and to safeguard the public welfare.

§ 3420.5-3 Consultation with Governors.

(a) The Secretary shall consult the Governor of the state in which any tract proposed for sale is located. The Secretary shall give the Governor a specified period of time to comment, not less than 30 days nor more than 60 days, before publishing a notice of sale for any tract within the state.

(b) When a tract proposed for lease sale within the boundaries of a National Forest would, if leased, be mined by surface mining methods, the Governor of the state in which the land to be leased is located shall be so notified by the Secretary. If the Governor fails to object to the lease sale proposal in 60 days, the Secretary may publish a notice of sale, including that tract. If, within the 60 day period, the Governor, in writing, objects to the lease sale proposal, the Secretary may not publish a notice of sale for that tract. Publication of the notice of sale shall be held in abeyance for 6 months from the date that the Governor objects. The Governor may, during this six-month period, submit a written statement of reasons why the tract should not be proposed for lease sale, and the Secretary shall, on the basis of this statement, reconsider the lease sale proposal.

§ 3420.5-4 Consultation with Indian tribes.

The Secretary shall consult with any Indian tribe which may be affected by the adoption of the proposed regional lease sale schedule. The Secretary shall give the tribe a specified period, not less than 30 days nor more than 60 days, in which to comment prior to adopting a lease sale schedule.

§ 3420.5-5 Consultation with the Attorney General.

The Secretary shall consult with and give due consideration to the advice of the Attorney General before the adoption of the proposed regional lease sale schedule. The Secretary shall provide not less than 30 days nor more than 60 days in which the Attorney General may advise the Secretary prior to adopting a lease sale schedule.

§ 3420.6 Qualified surface owner consent considerations.

§ 3420.6-1 Receipt and consideration of written consent.

(a) Prior to making a final decision on a regional lease sale schedule, the Secretary shall consider what written consents have been received for those lease tracts under consideration for inclusion in the regional lease sale schedule, in accordance with the split estate leasing provisions of this title.

(b) All other ranking, selection and scheduling factors being nearly equal, those tracts for which acceptable written consents have been received shall be chosen for inclusion in the regional coal lease sale schedule over those for which no acceptable written consents have yet been received.

§ 3420.6-2 Announcement of tracts under consideration.

With the release of the final regional lease sale environmental impact statement, the Secretary shall publish an announcement in the **Federal Register** containing:

(a) a legal description of all tracts under consideration for inclusion in the regional lease sale schedule, and

(b) the deadline for anyone to submit the written consent of any qualified surface owner for any tract under

consideration by the Secretary for selection for inclusion in the regional lease sale schedule.

§ 3420.7 Adoption of final regional lease sale schedule.

§ 3420.7-1 Announcement.

Following completion of the requirements of §§ 3420.5 and 3420.6 of this title the Secretary shall announce a final regional lease sale schedule. The announcement shall be published in the Federal Register and contain a legal description of each tract included in the lease sale schedule and the date when each tract has been tentatively scheduled for sale. Notice of this announcement shall be published in at least 1 newspaper of general distribution in each state within the region for which the regional lease sale schedule is adopted.

§ 3420.7-2 Revision.

(a) The Secretary may revise either the list of tracts included in the schedule or the timing of the lease sales in accordance with any alternatives which were considered in the regional lease sale environmental impact statement and during consultation under § 3420.5 of this title, if such revision would be in the public interest. Notice of any such revision shall be published in the same manner as the announcement of the original regional lease sale schedule.

(b) Any regional lease sale schedule may be updated or replaced as a result of a new regional tract ranking, selection, and scheduling effort conducted in accordance with the provisions of § 3420.4–4 of this title.

Subpart 3422—Lease Sales

§ 3422.1 Economic evaluation.

§ 3422.1-1 Mineral evaluation and comments on fair market value and maximum economic recovery.

After announcement of the regional lease sale schedule, and in any case not less than 30 days prior to the publication of a notice of sale, the authorized officer shall:

(a) Solicit public comment on the fair market value of the tract or tracts proposed to be offered. Such solicitation shall ask for comments on these items which affect the appraisal such as the terms and conditions of similar market transactions, the quality and extent of the coal resource, the price that the mined coal would bring in the market place, the cost of producing the coal, the interest rate at which anticipated income streams should be discounted, depreciation and other accounting factors, the value of the surface estate (if private surface), the mining method or methods which would achieve maximum economic recovery of the coal and any other items which might affect the appraisal of the tract or tracts. Such comments will be solicited for a period of not less than 30 days. The authorized officer shall forward a copy of all comments to the Geological Survey.

(b) Request from the Geological Survey and evaluation including a coal resource economic value (CREV) and a maximum economic recovery (MER) determination. Prior to issuance of the sale notice, the Geological Survey shall forward this evaluation to the authorized officer. This evaluation shall include the coal resource economic value, mining method evaluation, estimated recoverable reserves by bed, preliminary MER indication, coal quality assessment, royalty and lease bond recommendations; an estimate of reclamation fees that mining the tract would generate, and an evaluation of the public comments on fair market value and maximum economic recovery.

(c) Proprietary data marked as confidential may be submitted to the authorized officer in response to the solicitation of public comments. Data so marked shall be treated in accordance with the Freedom of Information Act.

§ 3422.1-2 Estimated fair market value determination.

(a) When the mineral evaluation and accompanying information is received from the Geological Survey, the authorized officer shall estimate the fair market value of the tract proposed for lease sale. Minimum bonus bids shall be not less than $25 per acre. When the estimated fair market value has been determined, the authorized officer shall inform the Geological Survey of the determination.

(b) The fair market value determinations for public body lease sales shall be derived in the same manner as for other lease sales.

§ 3422.2 Notice of sale.

(a) Prior to the lease sale, the authorized officer shall publish a notice of the proposed sale in the Federal Register and in a newspaper(s) of general circulation in the county or equivalent political subdivision in which the tracts to be sold are situated. The newspaper notice shall be published not less than once a week for 3 consecutive weeks. Such notice shall also be posted in the Bureau of Land Management State Office and shall be mailed to any surface owner of lands noticed for sale. The lease sale shall not be held until at least 30 days after such posting in the State Office.

(b) The notice shall:

(1) List the time and place of sale, the type of sale, bidding method (whether by sealed or oral bid), rental, and the description of the tract(s) being offered and the minimum acceptable bids to be considered;

(2) Contain the pre-lease indication of maximum economic recovery by bed of coal to be mined as a guide to bidders, even though this determination would not be a lease term, and would be subject to revision in the formal MER determinations to be made in mine plan approval; and

(3) Contain information on where a detailed statement of the terms and conditions of the lease(s) which may result from the lease sale may be obtained.

(c) The detailed statement of the terms and conditions of the lease(s) offered and bidding instructions for sale shall:

(1) Contain an explanation of the manner in which the bids may be submitted;

(2) Contain a statement that, if sealed bids are submitted, they may not be modified or withdrawn unless the modifications or withdrawals are received prior to the time fixed for opening the bids;

(3) Contain a statement that, if the sale is by oral bid, sealed bids may also be submitted;

(4) Contain a warning to all bidders concerning 18 U.S.C. 1860, which prohibits unlawful combination or intimidation of bidders;

(5) Specify that the Secretary reserves the right to reject any and all bids and the right to offer the lease to the next highest qualified bidder if the successful bidder fails to obtain the lease for any reason;

(6) Specify that, if any bid is rejected, any deposit shall be returned;

(7) Contain a notice that each bid shall be accompanied by the bidder's qualifications (43 CFR 3472.2–2);

(8) Contain a notice to bidders that the winning bidders shall have to submit the information required by the Attorney General for post-sale review (43 CFR 3422.3–4);

(9) Require the bidder to pay one fifth of the cash bonus bid;

(10) If appropriate, contain a copy of any written consent given by a qualified surface owner and its terms, including payments which the high bidder, if not the holder of the consent, will have to make;

(11) If appropriate, contain a notice that bidders shall file a statement that

all information they hold relevant to written consents affecting any area offered in the sale in which the bid is submitted has been filed with the proper Bureau of Land Management State Office (43 CFR Subpart 1821) in accordance with the provisions of subpart 3427 of this title; and

(12) Contain a copy of the proposed lease, including all terms and conditions, and including all stipulations concerning compliance with the requirements of the Surface Mining Control and Reclamation Act to be made a part of the lease.

(d) The successful bidder, if any, shall reimburse the Government for the cost of publishing the notice of sale as a condition of lease issuance.

§ 3422.3 Sale procedures.

§ 3422.3-1 Conduct of sale.

(a)(1) Sealed bids shall be received only until the hour on the date specified in the notice of competitive leasing; all sealed bids submitted after that hour shall be returned. The authorized officer shall read all sealed bids, and shall announce the highest bid. (2) If the announced procedure is to receive sealed bids followed by oral bids, the authorized officer conducting the sale shall open and read the sealed bids, after which the oral bidding shall begin at the level of the highest sealed bid. Only those submitting sealed bids may offer oral bids. After the oral bidding has ceased, the highest bid shall be announced. (3) No decision to accept or reject the high bid will be made at the time of sale.

(b) A sale panel shall convene to determine: (1) if the high bid was properly submitted; (2) if it reflects the fair market value of the tract; and (3) whether the bidder is qualified to hold the lease. The recommendations of the panel shall be sent to the authorized officer who shall make the final decision to accept a bid or reject all bids. The successful bidder shall be notified in writing. The Department reserves the right to reject any and all bids regardless of the amount offered, and shall not accept any bid that is less than fair market value. The authorized officer shall notify any bidder whose bid has been rejected and include in such notice a statement of the reason for the rejection. The Department reserves the right to offer the lease to the next highest qualified bidder if the successful bidder fails to execute the lease, or is for any reason disqualified from receiving the lease.

(c) Each sealed bid shall be accompanied by a certified check, cashier's check, bank draft, money order, certificate of bidding rights, personal check or cash for one-fifth of the amount of the bonus, and a qualifications statement over the bidder's own signature with respect to citizenship and interests held, as prescribed in § 3472.2-2 of this title. A high oral bidder shall tender by certified check, cashier's check, bank draft, money order, certificate of bidding rights, personal check or cash at the close of bidding any additional amount necessary to bring the amount tendered with his sealed bid up to one fifth of his oral bid.

§ 3422.3-2 Other bidding systems.

(a) The use of intertract bidding competition is authorized when, and if, the Bureau of Land Management and the Geological Survey in consultation with the Department of Energy determine it is needed in the public interest. The authorization to use intertract bidding competition does not preclude the use of any other form of competitive bidding procedures.

(b) In intertract bidding competition, the winning bidders, if any, are selected by determining first the tract with the single highest bid per ton of reserves among all tracts, then the tract with the second highest bid, and so forth. The bids may be weighted to compensate for differences in the physical quality of the coal in such tracts. If leases are awarded they shall be awarded for tracts proceeding in this sequence until the total reserve tonnage sought to be leased in that sale has been reached. Tracts receiving lower bids per ton shall not be leased as a result of a bid submitted in that sale.

§ 3422.3-3 Unsurveyed lands.

If the land is unsurveyed, the successful bidder shall not be given notice to comply with the requirements of § 3422.4 of this title for lease issuance until the land has been surveyed as provided in § 3471.1-2 of this title.

§ 3422.3-4 Consultation with the Attorney General.

(a) Definitions.

As used in this section, the term:

(1) "Moist mineral matter free", "dry mineral free", "low volatile", "high volatile", "bituminous", "subbituminous" and "lignite" are defined as in ANSI/ASTM D 388-77.

(2) "Committed reserves" means estimated volume of reserves necessary to fulfill current contractual commitments and reserves set aside for own use.

(3) "Uncommitted reserves" means all reserves not committed.

(4) "Affiliate" of the successful bidder means any person, association or corporation which controls, is controlled by, or is under common control with the successful bidder.

(5) "Control" includes having or acquiring effective power or influence to determine the policies, business practices or decisionmaking processes of another person, association or corporation, whether such power or influence is actual or legal and whether exercised directly through ownership of stock or assets, representation on the board of directors or election of one or more officers. Control shall be presumed to exist whenever any person, association or corporation owns 10 percent or more of the outstanding voting securities of another person, association or corporation.

(6) "Joint venture" means a corporation, partnership or association through which the successful bidder (or one or more affiliates of the successful bidder) and one or more non-affiliate corporations, partnerships or associations own or lease coal reserves.

(7) "Free swelling index" is defined as in ANSI/ASTM D720-67.

(b) Subsequent to a lease sale, but prior to issuing a lease, the authorized officer shall require the successful bidder to submit on a form or in a format approved by the Attorney General the information set out in this section relating to the bidder's coal holdings to the authorized officer for transmittal to the Attorney General. Upon receipt of the information, the authorized officer shall notify the Attorney General of the proposed lease issuance, the name of the successful bidder and the terms of the proposed lease and shall transmit the following statement on coal holdings. The successful bidder's submission shall include the following best available information required by the Attorney General for each coal tract or deposit controlled by the bidder:

(1) With regard to coal subject to the lease to be issued:

(i) Tract description (including state and county);

(ii) Total estimated in-place reserves;

(iii) Total estimated recoverable coal reserves;

(iv) Moist mineral matter free BTU content;

(v) Sulfur content of raw coal;

(vi) Anticipated sulfur content of coal as shipped;

(vii) Dry, mineral matter free volatile matter (for bituminous coal only); and

(viii) Free Swelling Index (for bituminous coal only).

(2) With regard to all coal holdings owned, leased or controlled by the successful bidder or any affiliate(s) of the successful bidder, or owned, leased or controlled by any joint venture of the successful bidder or any affiliate of the successful bidder at the time of the submission to the authorized officer:

(i) A separate listing of tons of total, and uncommitted in place and committed in place coal reserves by State (except that eastern and western Kentucky shall be reported separately) in the following categories:

(A) Low and medium volatile bituminous coal with a Free Swelling Index greater than 4 and with not more than 1 percent sulfur;

(B) Low and medium volatile bituminous coal with a Free Swelling Index greater than 4 and with more than 1 percent sulfur;

(C) High volatile bituminous coal with a Free Swelling Index greater than 4 and with no more than 1 percent sulfur;

(D) High volatile bituminous coal with a Free Swelling Index greater than 4 and with more than 1 percent sulfur;

(E) All other bituminous coal;

(F) Subbituminous coal;

(G) Lignite;

(H) Total coal; and

(I) Federal coal.

(ii) In the case of a joint venture, reserves shall be prorated according to shares of the joint venture for inclusion in the categories in paragraph (b)(2)(i).

(3) A list of all affiliates and joint ventures of the successful bidder owning, leasing or controlling coal reserves. In the case of a joint venture, the share of the joint venture shall be indicated.

(4) A statement indicating whether the successful bidder, any affiliate or any joint venture including the successful bidder or an affiliate is an railroad, a nuclear fuel fabricator or converter, or an electric utility. If so, each such company shall be identified.

(5) Upon notification by the authorized officer, and additional information the Attorney General may find necessary in order to complete his review of any proposed lease issuance.

(c) Where a successful bidder has previously submitted a statement of coal holdings in the above form, a reference to the date of submission and to the serial number of the record in which it is filed, together with a statement of any and all changes in holdings since the date of the previous submission, shall be accepted.

(d) The authorized officer shall not issue a lease until 30 days after the Attorney General receives the notice and statement of the successful bidder's coal holdings, or the Attorney General notifies the authorized officer that lease issuance would not create or maintain a situation inconsistent with the antitrust laws, whichever comes first. The Attorney General shall inform the successful bidders and simultaneously, the authorized officer, if the successful bidder's statement of coal holdings is incomplete or inadequate, and shall specify what information is required for the Attorney General to complete his review. The 30 day period shall stop running on the date of such notification and not resume running until the Attorney General receives the supplemental information.

(e) The authorized officer shall not issue the lease to the successful bidder, if, during the 30 day period, the Attorney General notifies the authorized officer that the lease issuance would create or maintain a situation inconsistent with antitrust law, except after complying with paragraph (f)(2) of this section.

(f) If the Attorney General notifies the authorized officer that a lease should not be issued, the authorized officer may:

(1) Reject all bids or many notify the Attorney General in accordance with paragraph (b) of this section that issuance of the proposed lease to the next qualified high bidder is under consideration; or

(2) Issue the lease if, after a public hearing is conducted on the record in accordance with the Administrative Procedure Act, the authorized officer determines that:

(i) Issuance of the lease is necessary to carry out the purposes of the Federal Coal Leasing Amendments Act of 1976;

(ii) Issuance of the lease is consistent with the public interest; and

(iii) There are no reasonable alternatives to the issuance of the lease consistent with the Federal Coal Leasing Amendments Act of 1976, the anti-trust laws, and the public interest.

(g) If the Attorney General does not reply in writing to the notification in paragraph (b) of this section within 30 days, the authorized officer may issue a lease without waiting for the advice of the Attorney General.

(h) Information submitted to the authorized officer to comply with this section shall be treated as confidential and proprietary data if marked "confidential" by the reporting company. Such information should be submitted to the authorized officer in a sealed envelope and transmitted in that form to the Attorney General.

§ 3422.4 Award of lease.

(a) After the authorized officer has accepted a high qualified bid, and the Attorney General has not objected to lease issuance or the procedures in § 3422.3–4(f)(2) of this title have been completed, the authorized officer shall send four copies of the lease form to the successful bidder. These forms shall be completed, signed, and returned within 30 days of receipt. In addition, the successful bidder shall, within the 30-day period: pay the balance of the bonus bid, if required; pay the first year's rental; pay the cost of publishing the notice of sale; and file a lease bond as required by Subpart 3474 of this chapter. Upon receipt of the above, the authorized officer shall execute the lease.

(b) If the successful bidder dies before the lease is issued, the provisions found in § 3472.2–4 of this title shall apply.

(c) At least half of the acreage offered for competitive lease in any 1 year shall be offered on a deferred bonus payment basis. In a deferred bonus payment, the lessee shall pay the bonus payment in 5 equal installments; the first installment shall be submitted with the bid. The balance shall be paid in equal annual installments due and payable on the next four anniversary dates of the lease. If a lease is relinquished or otherwise cancelled or terminated, the unpaid remainder of the bid shall be immediately payable to the United States.

(d) If the successful bidder fails to comply with the requirements of subsection (a) of this section, the deposit on the successful bid shall be forfeited to the United States.

Subpart 3425—Leasing on Application

§ 3425.0–2 Objective.

The objective of this subpart is to provide an application process through which the Department may consider holding lease sales apart from the competitive leasing process set out in §§ 3420.4 through 3420.7 of this title, where an emergency need for unleased coal deposits is demonstrated, or in areas outside coal production regions or outside eastern activity planning areas.

§ 3425.0–6 Policy.

Leasing proposals developed by this application process differ from those that originate through the activity planning process only with respect to the method of tract delineation and the manner in which the planning and environmental analysis will be completed.

§ 3425.1 Application for lease.

§ 3425.1-1 Where filed.

Application for a lease covering lands subject to leasing (43 CFR 3400.2) shall be filed in the Bureau of Land Management State Office having jurisdiction over the lands or minerals involved (43 CFR Subpart 1821).

§ 3425.1-2 Contents of application.

No specific form of application is required. Three copies of the application, including preliminary and other data required by this subpart shall be filed. The lands applied for shall be described in accordance with § 3471 of this title. The application must be accompanied by the filing fee (43 CFR 3473.2).

§ 3425.1-3 Qualifications of the applicant.

Any applicant for a lease shall meet the qualifications required of a lessee as specified in subpart 3472 of this title.

§ 3425.1-4 Emergency leasing.

(a) An emergency lease sale may be held in response to an application under this Subpart if the applicant shows:

(1) That the application involves an existing mining operation that has been producing coal for at least two years before the date of application, and either: (i) the Federal coal is needed within three years to maintain an existing mining operation at the current average annual level of production, or new contracted level of production to supply coal for contracts signed prior to the effective date of these regulations, as substantiated by a complete copy of the supply or delivery contract, or both; or (ii) if the coal deposits are not leased they shall be bypassed in the reasonably foreseeable future, and if leased, some portion of the tract applied for shall be used within three years, as substantiated by the proposed production levels stated in a mining sequence plan submitted as part of the application for lease; and

(2) That the need for the coal deposits shall have resulted from circumstances that were beyond the control of the applicant or that he could not have reasonably foreseen and planned for in time to allow for consideration of leasing the tract under the provisions of § 3420.4 of this title.

(b) The extent of any lease issued under this section shall not exceed 8 years of recoverable reserves at the rate of production under which the applicant qualifies in subsection (a)(1) of this section.

(c) No lease shall be issued under this section if:

(1) the applicant holds an existing lease issued under this section;

(2) such an existing lease and the application are related to the same mining operation; and

(3) the number of years of reserves (at the calculated rate of production) leased in accordance with subsection (b) of this section is greater than the number of years that have passed since the issuance of such an existing lease.

§ 3425.1-5 Leasing outside coal production regions.

A lease sale may be held in response to an application under this subpart if the application covers coal deposits which are:

(a) Outside a coal production region identified under § 3420.3–1(a)(1) of this title; or

(b) Within any part of an eastern coal production region designated to be subject to this subpart under § 3420.3–1(a)(2) of this title.

§ 3425.1-6 Hardship leases.

The Secretary may issue a lease under this subpart based on any application listed by serial number in the modified court order in *NRDC* v. *Hughes*, 454 F. Supp. 148 (D.D.C. 1978).

§ 3425.1-7 Preliminary data.

(a) Any application for a lease shall contain preliminary data to assist the authorized officer in conducting an environmental analysis as described in § 3425.3 of this title.

(b) Such preliminary data shall include:

(1) A map, or maps, (which may be available from state or Federal sources) showing the topography, physical features and natural drainage patterns, existing roads, vehicular trails, and utility systems; the location of any proposed exploration operations, including seismic lines and drill holes; to the extent known, the location of any proposed mining operations and facilities, trenches, access roads or trails, and supporting facilities including the approximate location and extent of the areas to be used for pits, overburden, and tailings; and the location of water sources or other resources that may be used in the proposed operations and facilities.

(2) A narrative statement, including:

(i) The anticipated scope, method, and schedule of exploration operations, including the types of exploration equipment to be used;

(ii) The method of mining anticipated, including the best estimate of the mining sequence and production rate to be followed;

(iii) The relationship between the mining operations anticipated on the lands applied for and existing or planned mining operations, or support facilities on adjacent Federal or non-Federal lands;

(iv) A brief description, including maps or aerial photographs, as appropriate, of: the existing land use or uses within and adjacent to the lands applied for; known geologic, visual, cultural, paleontological or archaeological features; wetlands and floodplains; and known habitat of fish and wildlife—particularly threatened and endangered species—any of which may be affected by the proposed or anticipated exploration or mining operations and related facilities;

(v) A brief description of the proposed measures to be taken to control or prevent fire and to mitigate or prevent soil erosion, pollution of surface and ground water, damage to fish and wildlife or other natural resources, air and noise pollution, adverse impacts to the social and infrastructure systems of local communities, and hazards to public health and safety; reclaim the surface; and meet other applicable laws and regulations. The applicant may submit other pertinent information that the applicant wishes to have considered by the authorized officer;

(vi) A statement which describes the intended use of the coal covered by the emergency application; and

(vii) Any other information which will show that the application meets the requirements of this subpart.

(c) The applicant may engage in casual use of the land in the application, but shall not undertake any exploration without prior authorization by exploration license, or undertake any mining operations until lease issuance.

(d) The authorized officer, after reviewing the preliminary data contained in an application, and at any time during an environmental assessment may request additional information from the applicant. Where the surface of the land is held by a qualified surface owner (Section 3400.0–5) and the mining method to be used is other than underground mining techniques, the authorized officer shall obtain documents necessary to show ownership of the surface. The applicant shall submit evidence of written consent from any qualified surface owner(s). (See 43 CFR Subpart 3427).

§ 3425.1-8 Rejection of applications.

(a) An application for a lease shall be rejected in total or in part when the authorized officer determines that: (1) the application is not consistent with the

applicable regulations; (2) issuance of the lease would violate the integrity of the normal leasing process; or (3) leasing of the lands covered by the application, for environmental or other sufficient reasons, would be contrary to the public interest.

(b) Any application subject to rejection under subsection (a) of this section shall not be rejected until the applicant is given written notice of the opportunity to provide requested missing information and fails to do so within the time specified in the decision issued for that purpose.

§ 3425.2 Land use plans.

No lease shall be issued under this subpart unless the lands have been included in a comprehensive land use plan or a land use analysis, as required in § 3420.1–5 of this title. The decision to hold a lease sale shall be consistent with the appropriate comprehensive land use plan or land use analysis.

§ 3425.3 Environmental analysis.

(a) Before a lease sale may be held under this subpart the authorized officer shall prepare an environmental assessment of the proposed lease area.

(1) The environmental assessment shall include:

(i) An evaluation of direct and indirect potential impacts including cumulative impacts of coal leasing and development upon the physical and socio-economic environment of the proposed lease area and adjacent areas that may be affected;

(ii) An evaluation of the technical and natural potential for successful reclamation on the proposed lease area; and

(iii) An evaluation of all reasonable alternatives to leasing the area or to any known plans of operation for the proposed area.

(2) The environmental assessment shall contain recommendations and special stipulations regarding:

(i) Lands that should be excluded from the proposed areas to avoid unacceptable environmental or special impacts, including those lands to be excluded as identified through the application of the unsuitability criteria in subpart 3461 of this title.

(ii) Any specific measures required to avoid or mitigate adverse impacts to, or to reclaim areas that may be acceptable for further consideration for leasing including measures to assure appropriate post-mining land use and measures to prevent irreparable damage or destruction of unique environmental values that are identified either through the application of the unsuitability criteria in subpart 3461 of this title or in the comprehensive land use plan or land use analysis.

(3) If, based upon the environmental assessment prepared under paragraph (2) of this section the authorized officer determines that an environmental impact statement is required under the National Environmental Policy Act of 1969, either a statement shall be prepared in accordance with the provisions of 40 CFR 1500, or the authorized officer may determine that, because of critical environmental considerations or limitations, including reclamation potential, the application shall be rejected pursuant to § 3425.1–8 of this title.

(4) If, based upon the environmental assessment prepared under (2), the authorized officer determines that an environmental impact statement is not required under the National Environmental Policy Act of 1969, a finding of no significant impact shall be prepared and issued in accordance with 40 CFR 1501.4 and 1506.6.

(b) For lease applications involving lands in the National Forest System, the authorized officer shall submit the lease application to the Secretary of Agriculture for consent, for completion or consideration of an environmental assessment and for the attachment of appropriate lease stipulations, and for the making of any other findings prerequisite to lease issuance. (43 CFR 3400.3, 3461.1(a)).

§ 3425.4 Consultation and sale procedures.

(a)(1) Prior to holding any lease sale in response to any application under this subpart, a public hearing or hearings shall be held on the proposed sale to allow public comment on and discussion of the potential effects of mining the proposed lease, including impacts on the environment, agriculture and other economic activities and community or regional services. The hearing on an environmental impact statement prepared under § 3425.3 of this title, if one is prepared, may satisfy the hearing requirement.

(2) Prior to holding any lease sale under this subpart, the Secretary shall consult with the entities and individuals listed in § 3420.5–2 through 3420.5–5 of this title.

(3) No notice of sale shall be published in response to an application under this subpart for any lands subject to § 3427.1 of this title unless and until the authorized officer has received written consent from the qualified surface owner(s).

(b)(1) Subpart 3422 of this title applies in full to any sale to be held in response to an application filed under subpart 3425 of this title.

(2) In addition to the requirements set forth in § 3422.2 of this title, in any sale authorized under § 3425.1–4 of this title, the successful bidder shall meet the criteria in § 3425.1–4 of this title.

§ 3425.5 Lease terms.

The terms of a lease issued under this subpart shall be consistent with the terms established for all competitive coal leases (43 CFR 3470).

Subpart 3427—Split Estate Leasing

§ 3427.0–1 Purpose.

The purpose of this subpart is to set out the protection that shall be afforded qualified surface owners of split estate lands (43 CFR 3400.0–5).

§ 3427.0–3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0–3 of this title.

(b) These regulations primarily implement section 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1304), as construed in Solicitor's Opinion M–36909, 86 I.D. 28 (1979).

§ 3427.0–7 Scope.

The surface owner consent provisions of the Surface Mining Control and Reclamation Act do not apply:

(a) to preference right lease applications; and

(b) if the split estate coal is to be mined by underground mining techniques. (43 CFR 3500.0–5.)

§ 3427.1 Deposits subject to consent.

On split estate lands (43 CFR 3400.0–5) where the surface is owned by a qualified surface owner, coal deposits that will be mined by methods other than underground mining techniques shall not be included in a lease sale notice without written consent from the qualified surface owner (43 CFR 3400.0–5) allowing the lessee/operator to enter and commence surface mining operations.

§ 3427.2 Procedures.

(a)(1) Each written consent, or evidence of written consent shall be filed with the appropriate Bureau of Land Management State Office (43 CFR Subpart 1821) at least 30 working days prior to the publication of the lease sale notice of the lands to which it applies. It shall be the responsibility of parties intending to file consents to be aware of pending coal lease sale notice dates. Generally, these dates shall be as

published in the final regional sale schedule (43 CFR 3420.7).

(2) Statement of refusal to consent shall be filed with the appropriate Bureau of Land Management State Office, but such statement shall be accepted for filing only during activity planning.

(b) Written consent, evidence of written consent, or statement of refusal to consent may be filed by any private person or persons with a potential interest in the lease sale of split estate lands.

(c) Such filing shall, at a minimum, contain the present legal address of the qualified surface owner, and the name, ownership, interest, if any, and legal address of the party making the filing, and if it is a written consent or evidence thereof, a copy of the written consent or evidence thereof.

(d) At each stage in the tract delineation, ranking and scheduling in that region, split estate lands that would be mined by other than underground mining techniques, covered by written consents that are filed with the appropriate State Office before the final decision on the pending regional lease sale schedule, shall be given priority over such split estate lands where there is no written consent from the qualified surface owner.

(e) Within 15 working days after the filing of a written consent, evidence thereof, or a statement of refusal to consent, the State Office shall verify that the written consent or evidence of such consent meets all of the following requirements, and that the statement of refusal to consent meets the requirements of paragraphs (2) and (3):

(1) The right to enter and commence mining is transferable to whoever makes the successful bid in a lease sale for a tract which includes the lands to which the consent applies. A written consent shall be considered transferable only if, at a minimum, it allows that after the lease sale for the tract to which the consent applies (i) the payment for the consent may be made by the successful bidder or (ii) the successful bidder may reimburse the party that first obtained the consent for the purchase price of the consent;

(2) The named surface owner is a qualified surface owner as defined in § 3400.0–5 of this title; and

(3) The title for all split estate lands described in the filing is held by the named qualified surface owners.

(f) Upon receipt of a filing from anyone other than the named qualified surface owner, the authorized officer shall contact the named qualified surface owner and request his confirmation in writing that the filed, transferable, written consent or evidence thereof to enter and commence mining has been granted, and that the filing fully discloses all of the terms of the written consent, or that the refusal to consent is accurate.

(g) The conditions of (e) and (f) shall be met prior to publication of the sale notice.

(h) The State Director shall in all cases notify the person or persons filing the written consent, evidence of written consent, or statement of refusal to consent of the results of the review of the filing, including any request for additional information needed to satisfy the requirements of this subpart in cases where insufficient information was supplied with the original filing.

(i) The purchase price of any applicable written consent from a qualified surface owner shall be included with the description of the tract(s) in the notice of lease sale, and the other terms of the consent shall be included in the detailed statement on the tract sale.

(j) Any statement of refusal to consent shall be treated as controlling until the land use plan that includes the area covered by the refusal to consent is revised or the surface estate is sold. When revision of the land use plan is initiated, the qualified surface owner shall be notified that his prior statement of refusal has expired, and shall be given the opportunity to submit another statement.

§ 3427.3 Validation of information.

Any person submitting a written consent shall include with his filing a statement that the evidence submitted, to the best of his knowledge, represents a true, accurate, and complete statement of information regarding the consent for the area described.

§ 3427.4 Pre-existing consents.

An otherwise valid written consent given by a qualified surface owner prior to August 4, 1977, shall be considered valid for the purposes of this subpart.

PART 3430—NONCOMPETITIVE LEASES

Subpart 3430—Preference Right Leases

Sec.

3430.0–1 Purpose.
3430.0–3 Authority.
3430.0–7 Scope.
3430.1 Preference right leases.
3430.1–1 Showing required for entitlement to a lease.
3430.1–2 Commercial quantities defined.
3430.2 Application for lease.
3430.2–1 Initial showing.
3430.2–2 Additional information to comply with statutory and regulatory requirements.
3430.2–3 Additional time.
3430.3 Planning and environment.
3430.3–1 Land use planning.
3430.3–2 Environmental analysis.
3430.4 Final showing.
3430.4–1 Request for final showing.
3430.4–2 Additional information.
3430.5 Determination of entitlement to lease.
3430.5–1 Rejection of application.
3430.5–2 Appeals, lack of showing.
3430.5–3 Determination to lease or seek an exchange.
3430.5–4 Lease exchange.
3430.6 Lease issuance.
3430.6–1 Lease terms.
3430.6–2 Bonding.
3430.6–3 Lease area.
3430.6–4 Duration of leases.
3430.7 Trespass.

Subpart 3431—Negotiated Sales—Rights-of-Way

3431.0–1 Purpose.
3431.0–3 Authority.
3431.1 Qualified purchaser.
3431.2 Terms and conditions of sale.

Subpart 3432—Lease Modifications

3432.0–3 Authority.
3432.1 Application.
3432.2 Availability.
3432.3 Terms and conditions.

Subpart 3435—Lease Exchange

3435.0–1 Purpose.
3435.0–3 Authority.
3435.1 Coal lease exchanges.
3435.2 Qualified exchange proponents—limitations.
3435.3 Exchange procedures.
3435.3–1 Exchange notice.
3435.3–2 Initial response by lessee or lease applicant.
3435.3–3 Agreement to terms.
3435.3–4 Determination of value.
3435.3–5 Notice and public hearing.
3435.3–6 Consultation with Governor.
3435.3–7 Consultation with the Attorney General.
3435.4 Issuance of lease, lease modification, or bidding rights.

Subpart 3436—Lease Exchange—Alluvial Valley Floors

3436.0–1 Purpose.
3436.0–3 Authority.
3436.1 Qualified exchange proponents.
3436.2 Exchange procedures.
3436.3 Recovery costs.
3436.4 Lease issuance.

Subpart 3437—Coal Land Exchange—Alluvial Valley Floors

3437.0–1 Purpose.
3437.0–3 Authority.
3437.1 Qualification criteria.
3437.1–1 Qualified exchange proponents.
3437.1–2 Unqualified proponents.
3437.2 Exchange procedures.

Authority.—30 U.S.C. 181 et seq.; 30 U.S.C. 521–531; 30 U.S.C. 351–358; 30 U.S.C. 1201 et

seq.; 42 U.S.C. 7101 et seq. and 43 U.S.C. 1701 et seq.

Subpart 3430—Preference Right Leases

§ 3430.0-1 Purpose.

These regulations set forth procedures for processing noncompetitive (preference right) coal lease applications on Federal lands.

§ 3430.0-3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement section 2(b) of the Mineral Leasing Act of 1920 (30 U.S.C. 201(b)).

(c) These regulations also implement Solicitor's Opinion M-36893, 84 I.D. 442 (1977).

§ 3430.0-7 Scope.

Because section 4 of the Federal Coal Leasing Amendments Act of 1976, amending 30 U.S.C. 201(b), repealed the Secretary's authority to issue or extend a coal prospecting permit on Federal lands, the regulations in this subpart apply only to lease applications which have already been filed. No additional prospecting permits that confer a preference right to a coal lease shall be issued. Therefore, these regulations address only the procedures for processing pending preference right lease applications. The surface owner consent provisions of section 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1304), do not apply to preference right lease applications.

§ 3430.1 Preference right leases.

§ 3430.1-1 Showing required for entitlement to a lease.

An applicant for a preference right lease shall be entitled to a noncompetitive coal lease if the applicant can demonstrate that he discovered commercial quantities of coal on the prospecting permit lands within the term of the prospecting permit, all other requirements having been met.

§ 3430.1-2 Commercial quantities defined.

For the purpose of § 3430.1-1 of this title, commercial quantities is defined as follows:

(a) The coal deposit discovered under the prospecting permit shall be of such character and quantity that a prudent person would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

(b) The applicant shall present sufficient evidence to show that there is a reasonable expectation that revenues from the sale of the coal shall exceed the cost of developing the mine and extracting, removing, transporting, and marketing the coal. The costs of development shall include the estimated cost of exercising environmental protection measures and suitably reclaiming the lands and complying with all applicable Federal and state laws and regulations.

§ 3430.2 Application for lease.

§ 3430.2-1 Initial showing.

All preference right coal lease applications shall have contained or shall have been supplemented by the timely submission of the following information:

(a) The measured and indicated quantity and quality of the reserves discovered within the boundaries of the prospecting permit.

(1) Coal quantity shall be indicated by structural maps of the tops of all beds to be mined, isopachous maps of beds to be mined and interburden; and, for beds to be mined by surface mining methods, isopachous maps of the overburden. These maps shall show the location of test holes and outcrops. An estimate of the measured and indicated reserves for each bed to be mined shall be included.

(2) Coal quality data shall include, at a minimum, an average proximate analysis, sulfur content, and BTU content of the coal in each bed to be mined. Also, all supporting geological and geophysical data used to develop the required information shall be submitted.

(b) Topographic maps as available from state or Federal sources showing physical features, drainage patterns, roads and vehicle trails, utility systems, and water sources. The location of proposed development and mining operations facilities shall be identified on the maps. These maps shall include the approximate locations and extent of tailings and overburden storage areas; location and size of pit areas; and the location of water sources or other resources that may be used in the proposed operation and facilities incidental to that use.

(c) A narrative statement that includes:

(1) The anticipated scope of operations, the schedule of operations, and the types of equipment to be used;

(2) The mining method to be used and an estimate of the expected mining sequence and production rate;

(3) The relationship, if any, between operations planned on the land applied for and existing or planned operations and facilities on adjacent lands;

(4) A brief description, including maps or aerial photographs as appropriate of: (i) existing land uses on and adjacent to the applied for land; (ii) known geologic, visual, cultural, or archaeological features on the applied-for land; and (iii) known wildlife habitat, and that of threatened or endangered plant and animal species, that may be affected by the planned exploration and mining operations;

(5) A brief description of measures planned to prevent or control fire and to mitigate or prevent soil erosion, ground and surface water pollution, damage to wildlife or its habitat, air and noise pollution, hazards to public health and safety, and impacts to the social and infrastructure systems of local communities; and

(6) A brief description of any plans that the applicant wishes to have considered by the authorized officer which show how the applicant expects to reclaim disturbed sites and otherwise meet applicable laws and regulations.

§ 3430.2-2 Additional information to comply with statutory and regulatory requirements.

In addition to the information required by § 3430.2-1 of this title, the applicant shall have submitted within the time specified by the authorized officer:

(a) certified abstracts indicating the presence of any mining claims lying within or partly within the preference right lease application area that were located prior to the issuance of the prospecting permit, or a certified abstractor's certificate indicating the absence of any mining claims located prior to that time; or

(b) any other information needed to show compliance with statutory or regulatory requirements.

§ 3430.2-3 Additional time.

(a) If the applicant has timely submitted some, but not all, of the information required by §§ 3430.2-1 and 3420.2-2 of this title, the authorized officer shall request additional information and shall specify the information required.

(b) The applicant shall submit any requested information within 60 days of the date of the request. The authorized officer may grant one 60-day extension if the applicant files a written request for an extension within the first 60-day period.

§ 3430.3 Planning and environment.

§ 3430.3–1 Land use planning.

(a) As a matter of policy, the Department shall complete the processing of all preference right lease applications by December 1, 1984.

(b) Preference right lease applications shall be processed in the cycle of on-going comprehensive land use plans unless the authorized officer determines that the processing of the application, in the cycle of on-going comprehensive land use plans, will not be completed by December 1, 1984.

(c)(1) Each applicant may file a request with the authorized officer:

(i) for an estimate of when the application shall be processed in the cycle of on-going comprehensive land use plans; and

(ii) to have the applicant's application processed in advance of the period specified in the authorized officer's estimate.

(2) The request shall include a statement of how the applicant will benefit from having the application processed more quickly than otherwise scheduled, and shall specify how the pendency of the application affects the applicant's production, marketing or use of coal before 1986.

(3) If the authorized officer concludes that the failure to process an application apart from the cycle of on-going comprehensive land use plans would cause the applicant substantial hardship, the authorized officer may process the application apart from the cycle of on-going comprehensive land use plans. If the authorized officer has multiple applications which he or she finds involve substantial hardship, the authorized officer, in determining which applications to process first, shall consider the applicant's need for coal, the length of time the application has been pending, the regional need for coal and the promptness with which the applicant has responded to requests for information from the Department.

§ 3430.3–2 Environmental analysis.

(a) After the applicant has completed the initial showing required under § 3430.2 of this title, the authorized officer shall conduct an environmental analysis of the proposed preference right lease area and prepare an environmental assessment or environmental impact statement on the application.

(b) The environmental assessment or environmental impact statement shall include:

(1) An evaluation of direct and indirect potential impacts including cumulative impacts of leasing and development upon the physical and socioeconomic environment of the proposed lease area and adjacent areas that may be affected;

(2) An evaluation of the technical and natural potential for successful reclamation on the proposed lease area; and

(3) An evaluation of all reasonable alternatives to leasing the area, including the possibilities of exchange or purchase, or to any known plans of operation for the proposed area as set forth in any preliminary data and information.

(c) The environmental assessment or environmental impact statement record shall be prepared containing recommendations on lease terms and special stipulations regarding:

(1) Lands that should be leased with conditions or protective stipulations or other action to prevent unacceptable environmental or social impacts, including stipulations or other actions to protect those lands identified through the application of the unsuitability criteria of subpart 3461 of this title;

(2) Any specific measures required to avoid or to mitigate adverse impacts, or to reclaim areas that may be acceptable for leasing and development, including measures to assure appropriate postmining land use.

(d) If, based upon an environmental assessment prepared under (c), the authorized officer determines that an environmental impact statement is required under the National Environmental Policy Act of 1969, such a statement shall be prepared according to 40 CFR Group 1500.

(e) If, based upon an environmental assessment prepared under (c), the authorized officer determines that an environmental impact statement is not required, a finding of no significant impact shall be prepared and issued in accordance with 40 CFR 1501.4 and 1506.6.

§ 3430.4 Final showing.

§ 3430.4–1 Request for final showing.

(a) Upon completion of the environmental assessment or impact statement on the application, the authorized officer shall promptly request a final showing by the applicant.

(b) The authorized officer shall transmit to the applicant, with the request for a final showing, the following:

(1) The proposed lease form, including any proposed stipulations; and

(2) A copy of the environmental assessment or impact statement on the application including a map or maps showing all areas subject to specific conditions or protective stipulations because they have been assessed or designated to be unsuitable for all or certain stipulated methods of coal mining, or because of other identified values that are not embodied in the unsuitability criteria in subpart 3461 of this title.

(c) Within 90 days of receiving the proposed lease form, the applicant shall submit the following information:

(1) Estimated revenues;

(2) The estimated costs that a prudent person would consider before deciding to operate the proposed mine, including but not limited to, the cost of developing the mine, removing the coal, processing the coal to make it salable, transporting the coal, paying applicable royalties and taxes, and complying with applicable laws and regulations, the proposed lease terms, and special stipulations; and

(3) A comparison of the estimated costs and revenues of any mining venture constituting the logical mining unit of which the lease would become a part.

(d) The information submitted by the applicant shall be sufficiently detailed to determine whether the applicant's showing (1) has a reasonable factual basis, (2) supports the applicant's assertion that the proposed lease contains commercial quantities of coal, and (3) reflects a consideration of all factors required by this section.

(e) The applicant may delete any area subject to special conditions or protective stipulations, because it has been assessed to be unsuitable or otherwise, and the costs of mining subject to the conditions or protective stipulations, from the final showing required by paragraph (c) of this section.

§ 3430.4–2 Additional information.

(a) If the applicant for a preference right lease has submitted timely, some, but not all of the information required in § 3430.4–1 of this title, the authorized officer shall request additional information and shall specify the information required.

(b) The applicant shall submit any requested additional information within 60 days of the receipt of the request. The authorized officer may grant one 60-day extension if the applicant files a written request within the first 60-day period.

§ 3430.5 Determination of entitlement to lease.

§ 3430.5–1 Rejection of application.

(a) The authorized officer shall reject the application if:

(1) The applicant fails to show that coal exists in commercial quantities on the applied for lands; or

(2) The applicant does not respond to a request for additional information within the time period specified in §§ 3430.2–3 or 3430.4–2 of this title; or

(3) The applicant otherwise failed to meet mandatory statutory or regulatory requirements, including those relating to acreage limitations, qualifications to hold leases, timely payment of rent or procedural requirements.

(b)(1) The authorized officer shall reject those portions of an otherwise acceptable application which were not available for prospecting when the underlying prospecting permit was issued because the lands were claimed, developed or withdrawn from coal leasing.

(2) In any action under this subsection, the authorized officer shall reject all lands in each affected smallest legal subdivision or, if practicable, each affected 10 acre aliquot part of the subdivision.

§ 3430.5–2 Appeals, lack of showing.

(a) If the application is rejected because the existence of commercial quantities of coal has not been shown, the applicant may, in accordance with the procedures in Part 4 of this title, file a notice of appeal and a statement of the reasons for the appeal.

(b) The applicant shall have the right to a hearing before an Administrative Law Judge if the applicant alleges that the facts in the application are sufficient to show entitlement to a lease.

(c) In such a hearing, the applicant shall bear both the burden of going forward and the burden of proof to show, by a preponderance of evidence, that commercial quantities of coal exist in the proposed lease area.

§ 3430.5–3 Determination to lease or seek an exchange.

(a) A preference right lease shall be issued if, upon review of the application, any available land use plan, and environmental assessment, the authorized officer determines that:

(1) coal has been discovered in commercial quantities on the lands applied for; and

(2) the applicant has used reasonable economic assumptions and data to support the showing that coal has been found on the proposed lease in commercial quantities; and

(3) the conditions or protective lease stipulations assure that environmental damage can be avoided or acceptably mitigated.

(b) The authorized officer may recommend that the Secretary initiate exchange proceedings under § 3430.5–4 of this title, if he determines that:

(1) The land under application has been shown to contain commercial quantities of coal;

(2) All or a portion of the proposed lease has been assessed as land that should be unavailable for coal development because of land use or resource conflicts or as land that is unsuitable for coal mining under the provisions of subpart 3461 of this title; and

(3) The land is exempted from the application of any relevant unsuitability criteria or, for similar reasons, the Secretary lacks the authority to prevent damage to or loss of the land use of resource values threatened by lease operations.

§ 3430.5–4 Lease exchange.

The Secretary may initiate, upon his own initiative, the recommendation of the authorized officer, or the request of the applicant, lease exchange procedures under 43 CFR Subpart 3435 for the issuance of coal lease bidding rights, modifications to existing coal leases, a mineral lease under subpart 3526 of this title, or in the case of an application including lands in an alluvial valley floor, the issuance of a coal lease under provisions of subpart 3436 of this title, if he finds that the three conditions in § 3430.5–3(b) of this title are met.

§ 3430.6 Lease issuance.

§ 3430.6–1 Lease terms.

Each preference right lease shall be subject to the terms provided for Federal coal leases established in part 3470 of this title including: royalty and rental rates and the diligent development, continued operation and logical mining unit requirements in § 3475.4 of this title.

§ 3430.6–2 Bonding.

The lease bond for a preference right lease shall be set in accordance with subpart 3474 of this title.

§ 3430.6–3 Lease area.

A preference right lease shall include all lands in the application used in deterimining the entitlement to a lease.

§ 3430.6–4 Duration of leases.

Preference right leases shall be issued for a term of 20 years and for so long thereafter as coal is produced in commercial quantities as defined in subpart 3400.0–5 of this title. Each lease shall be subject to readjustment at the end of the first 20-year period and at the end of each period of 10 years thereafter in accordance with subpart 3451 of this title.

§ 3430.7 Trespass.

Mining operations conducted prior to the effective date of a lease shall constitute an act of trespass and be subject to penalties specified by § 9239.5 of this title.

Subpart 3431—Negotiated Sales—Rights-of-Way

§ 3431.0–1 Purpose.

The purpose of this subpart is to provide procedures for the sale of coal that is necessarily removed in the exercise of a right-of-way issued under Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 et seq.).

§ 3431.0–3 Authority.

(a) The regulations of this subpart are issued under the authority of the statutes cited in § 3400.0–3 of this title.

(b) These regulations primarily implement section 2(a)(1) of the Mineral Leasing Act of 1920, as amended by section 2 of the Act of October 30, 1978 (30 U.S.C. 201(a)(1)).

§ 3431.1 Qualified purchaser.

Any person who has acquired or applied for a right-of-way under Title V of the Federal Land Policy and Management Act of 1976 which requires the removal of coal deposits as a necessary incident to development, construction or use of the right-of-way is qualified to purchase the coal to be removed.

§ 3431.2 Terms and conditions of sale.

(a) Coal to be removed in connection with a right-of-way shall be sold to the qualified purchaser only at the estimated fair market value, as determined by the Secretary.

(b) Where the right-of-way is being used in connection with the development of a lease, the removal of coal from the right-of-way shall be subject to the same requirements for health and safety protection, surface protection and rehabilitation that apply to the lease involved, and provisions for adequate recovery and conservation of the coal deposit.

(c) Where the right-of-way is not being used in the develoment of a Federal coal lease, the removal of the coal shall be made subject to the surface Mining Control and Reclamation Act of 1977, and subject to such terms and conditions as the authorized officer determines are necessary: (1) to protect public health, safety, and the

environment; and (2) to ensure adequate recovery and conservation of the coal deposits in the right-of-way.

(d) All terms and conditions of the sale shall be terms and conditions of the right-of-way and shall be administered under the provisions of group 2800 of this title.

Subpart 3432—Lease Modifications

§ 3432.0–3 Authority.

(a) The regulations of this subpart are issued under the authority of the statutes cited in § 3400.0–3 of this title.

(b) These regulations primarily implement section 3 of the Mineral Leasing Act of 1920, as amended by section 13 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 203).

§ 3432.1 Application.

(a) A lessee may apply for a modification of a lease to include coal lands or coal deposits contiguous to those embraced in a lease. In no event shall the acreage in the application, when combined with the total area added by all modifications made after August 4, 1976, exceed 160 acres or the number of acres in the original lease, whichever is less.

(b) The lessee shall file the application for modification in the Bureau of Land Management State Office having jurisdiction over the lands involved (43 CFR Subpart 1821), describing the additional lands desired, the lessee's needs or reasons for such modification, and the reasons why the modification would be to the advantage to the United States.

§ 3432.2 Availability.

(a) The authorized officer may modify the lease to include all or part of the lands applied for if he determines that: (1) the modification serves the interests of the United States; (2) there is no competitive interest in the lands or deposits; and (3) the additional lands or deposits cannot be developed as part of another potential or existing independent operation.

(b) Coal deposits underlying land the surface of which is held by a qualified surface owner, and which would be mined by other than underground mining techniques, may not be added to a lease by modification.

(c) The lands applied for shall be added to the existing lease without competitive bidding, but the United States shall receive the fair market value of the lease of the added lands, either by cash payment or adjustment of the royalty applicable to the lands added to the lease by the modification.

§ 3432.3 Terms and conditions.

(a) The terms and conditions of the original lease shall be made consistent with the laws, regulations, and lease terms applicable at the time of modification except that if the original lease was issued prior to August 4, 1976, the minimum royalty provisions of section 6 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 207; 43 CFR 3473.3–2) shall not apply to any lands covered by the lease prior to its modification until the lease is readjusted.

(b) Before a lease is modified, the lessee shall file a written acceptance of the conditions imposed in the modified lease and a written consent of the surety under the bond covering the original lease to the modification of the lease and to extension of the bond to cover the additional land.

(c) A lease modification shall not be made until the authorized officer has complied with the procedures and standards set out in § 3425.3 of this title.

Subpart 3435—Lease Exchange

§ 3435.0–1 Purpose.

The objective of these regulations is to provide methods for exchange of coal resources when it would be in the public interest to shift the impact of mineral operations from leased lands to currently unleased lands to preserve public resource or social values, and to carry out Congressional directives authorizing coal lease exchanges.

§ 3435.0–3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0–3 of this title.

(b) These regulations primarily implement:

(1) Section 3 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 203);

(2) Section 510(b)(5) of the Surface Mining Control and Reclamation Act (30 U.S.C. 1260(b)(5); and

(3) Section 1 of the Act of October 30, 1978 (92 Stat. 2073).

§ 3435.1 Coal lease exchanges.

Where the Secretary determines that coal exploration, development and mining operations would not be in the public interest on an existing lease or preference right lease application, or where the Congress has authorized lease exchange for a class or list of leases, an existing lease or preference right lease application may be relinquished in exchange for:

(a) Leases where the Congress has specifically authorized the issuance of a new coal lease;

(b) The issuance of coal lease bidding rights of equal value;

(c) A mineral lease other than coal, by mutual agreement between the applicant and the Secretary under subpart 3526 of this title; or

(d) Federal coal lease modifications; or

(e) Any combination of the above.

These interests may be granted to the extent of the Secretary's authority in exchange for the relinquishment of all or part of the existing lease or preference right lease application, any part of which has been or may be assessed to be unacceptable for development because of non-coal public values identified or discovered after the lease or prospecting permit was issued.

§ 3435.2 Qualified exchange proponents—Limitations.

(a) Any person who holds a Federal coal lease, or a preference right lease application that has been found to meet the commercial quantities requirements of §§ 3430.1 and 3430.5 of this title on lands described in § 3435.1 of this title is qualified to ask the Secretary to initiate an exchange.

(b) Except for leases qualified under subpart 3536 of this title, the Secretary may issue a new coal lease in exchange for the relinquishment of outstanding leases or lease applications only in those cases listed in section 1 of the Act of October 30, 1978.

(c) The Secretary shall evaluate each qualified exchange request and determine whether an exchange is appropriate.

(d) Any modification of a coal lease in an exchange under this subpart shall be subject to the limitations in §§ 3432.1(a) and 3432.2(b) of this title.

§ 3435.3 Exchange procedures.

§ 3435.3–1 Exchange notice.

(a) The Secretary shall initiate exchange procedures by notifying in writing a Federal coal lessee or preference right lease applicant that consideration of an exchange of mineral leases or other coal lease interests is appropriate. The notification may be on the Secretary's initiative or in response to a request under § 3435.2 of this title.

(b) The exchange notice shall include a statement of why the Secretary believes an exchange may be in the public interest.

(c) The notice may contain a description of the lands on which the Secretary would grant a lease or lease interest in exchange. If the exchange is for coal development rights, the lands shall be selected from those found

acceptable for further consideration for leasing under § 3420.2 of this title. The description of the interests under consideration for relinquishment may include all or part of an existing lease or preference right lease application.

(d) The notice shall contain a request that the lessee or preference right lease applicant indicate whether he is willing to negotiate an exchange.

§ 3435.3-2 Initial response by lessee or lease applicant.

(a) The lessee or preference right lease applicant wishing to negotiate an exchange shall so reply in writing within 60 days of the receipt of the exchange notice. The reply may include a description of the lands on which the lessee or lease applicant would accept an exchange lease or grant of coal lease modifications.

(b) A reply to the exchange notice by a lessee or preference right lease applicant indicating willingness to enter into an exchange shall also indicate willingness to provide the geologic and economic data needed by the Secretary to determine the fair market value of the lease or lease application to be relinquished. The lessee or preference right lease applicant shall also indicate willingness to provide any geologic and economic data in his possession that will help the Secretary to determine the fair market value of the potential Federal lease exchange tract or tracts.

§ 3435.3-3 Agreement to terms.

(a) If both parties wish to proceed with the exchange, the authorized officer and the lessee or preference right lease applicant shall:

(1) Negotiate the selection of appropriate exchange lands containing a logical mining unit of coal in those cases where the Secretary is authorized to issue a coal exchange lease, or a minable unit of leasable minerals other than coal;

(2) Negotiate appropriate coal lease modifications;

(3) Negotiate to establish the value of coal lease bidding rights; or

(4) Negotiate any combination of the above.

(b) Land proposed for lease in exchange for, or for inclusion in, an existing lease or preference right lease application shall be subject to leasing under group 3400 or 3500 of this title as appropriate, and any coal lands shall have been found to be acceptable for further consideration for leasing under § 3420.2–3 of this title.

§ 3435.3-4 Determination of value.

The value of the land to be leased, or added by lease modification, or of the bidding rights to be issued in exchange shall, to the satisfaction of the lessee or lease applicant and the Secretary, be equal to the estimated fair market value of the lease or lease application to be relinquished.

§ 3435.3-5 Notice and public hearing.

(a) After the lessee or lease applicant and the Secretary agree on the land to be leased, the coal lease modifications to be granted or the bidding rights to be issued, notice of the proposed exchange shall be published in the **Federal Register** and in at least one newspaper of general circulation in each county or equivalent political subdivision where both the offered and selected lands are located. The notice shall announce that, upon request, at least one public hearing will be held in a city or cities located near each tract involved. The notice shall also contain the Secretary's preliminary findings why the proposed exchange is in the public interest. The hearing(s), if any, shall be held to obtain public comments on the merits of the proposed exchange.

(b) If the tract to be leased in exchange has been identified at the time of the environmental assessment or environmental impact statement of the exchange, any notice of the availability of a draft statement or public hearing on the assessment or statement may be used to comply with subsection (a) of this section.

§ 3435.3-6 Consultation with Governor.

(a) The Secretary shall notify the Governor of each state in which lands in the proposed exchange are located of the terms of the exchange and the Secretary's preliminary findings why the exchange is in the public interest. The Secretary shall give each Governor at least 45 days after this notification to comment on the proposal prior to consummating the exchange.

(b) If, within the 45 day period, the Governor(s), in writing, objects to an exchange that involves leases or lease rights in more than one state, the Secretary will not consummate the exchange for 6 months from the date of objection. The Governor(s) may during this 6-month period submit a written statement why the exchange should not be consummated, and the Secretary shall, on the basis of this statement, reconsider the lease proposal.

§ 3435.3-7 Consultation with the Attorney General.

In any exchange which, if consummated, shall result in the issuance of a Federal coal lease, the Secretary, after issuing an exchange notice under § 3435.3–1 of this title and before issuance of a written decision under § 3435.4 of this title;

(a) shall require the lessee or lease applicant to submit the information in § 3422.3–4 of this title; and

(b) if the Attorney General, within 30 days, objects to lease issuance, shall not issue the exchange lease except after complying with the provisions of § 3422.3–4(f)(2) of this title.

§ 3435.4 Issuance of lease, lease modification, or bidding rights.

(a) If, after any public hearing(s), the Secretary by written decision concludes that the issuance of a coal or other mineral lease or coal lease modification or coal lease bidding rights in exchange for the relinquishment of the existing lease, preference right lease application or portion thereof is in the public interest, lease, stipulations for operations on the exchange lease or modified lease shall be established.

(b) The exchange documents shall contain:

(1) A statement that the lessee thereby quitclaims all right or interest in the lease or preference right lease application exchanged; and

(2) A statement of the Secretary's findings that lease issuance is in the public interest.

(c) The exchange lease or lease modification shall be issued upon relinquishment of the lease, preference right lease application, or portion thereof.

(d) The exchange lease or lease modification shall be subject to all relevant provisions of group 3400 or 3500 of this chapter, 30 CFR Chapter VII, Subchapter D, and 30 CFR Part 211, as appropriate.

Subpart 3436—Lease Exchange—Alluvial Valley Floors

§ 3436.0-1 Purpose.

The purpose of this subpart is to establish procedures for coal lease exchanges where coal development operations would interrupt, discontinue or preclude farming on alluvial valley floors west of the 100th Meridian, west longitude, or materially damage the quantity or quality of water in surface or underground systems that supply these alluvial valley floors.

§ 3436.0-3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement section 510(b)(5) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1260(b)(5)).

§ 3436.1 Qualified exchange proponents.

(a) The coal lease exchange program for designated alluvial valley floors shall be limited to any person who holds a Federal coal lease or preference right lease application on lands west of the 100th Meridian, west longitude, and who has made substantial financial and legal commitments prior to January 4, 1977, in connection with the lease or preference right lease application, and who otherwise meets the criteria in the proviso in section 510(b)(5) of the Surface Mining Control and Reclamation Act of 1977. Any such person may propose an exchange under this subpart.

(b) The lease offered in exchange by the Secretary shall be for lands determined to be acceptable for leasing under criteria of the Geological Survey and acceptable for further consideration for leasing under the criteria in § 3420.2-3 of this title, including the unsuitability criteria in subpart 3461 of this title.

§ 3436.2 Exchange procedures.

(a) The Secretary on his own motion, or upon recommendation of the authorized officer, or upon request by any qualified lessee, may initiate a lease exchange. No special form of application is required.

(b) The exchange shall be processed in accordance with the procedures in subpart 3435 of this title for other lease and lease interest exchanges.

§ 3436.3 Recovery of costs.

The exchange proponent shall bear all administrative costs of the exchange, including the cost of establishing the value of each lease involved in the exchange.

§ 3436.4 Lease issuance.

Any coal lease issued as a result of an exchange under this subpart shall be subject to all relevant provisions of group 3400 of this title, 30 CFR Chapter VII, Subchapter D, and 30 CFR Part 211.

Subpart 3437—Coal Land Exchange—Alluvial Valley Floors

§ 3437.0-1 Purpose

The purpose of this subpart is to establish criteria for the exchange of privately owned (fee) coal for unleased federally-owned coal where coal mining operations would interrupt, discontinue, or preclude farming on alluvial valley floors west of the 100th Meridian, west longitude, or materially damage the quantity and quality of water in surface or underground systems that supply these alluvial valley floors.

§ 3437.0-3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement:

(1) Section 510(b)(5) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1260(b)(5)); and

(2) Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

§ 3437.1 Qualification criteria.

§ 3437.1-1 Qualified exchange proponents.

The fee coal exchange program for designated alluvial valley floors shall initially be limited to all qualified persons who (a) own coal west of the 100th Meridian, west longitude, and:

(b)(1) Who have made or whose lesses have made substantial financial and legal commitments prior to January 1, 1977, in connection with the coal holding; or

(2) Who have had or whose lessees have had the regulatory authority not issue a surface mining permit because the holding is in an alluvial valley floor, and who otherwise meet the criteria of the provision in section 510(b)(5). Any such person may provision in section 510(b)(5). Any such person may propose an exchange under this subpart.

§ 3437.1-2 Unqualified proponents.

The Secretary shall not consider an exchange proposed by the owner of coal west of the 100th meridian west longitude otherwise qualified under § 3437.1-1 of this title, where:

(a) The existing land use is undeveloped rangeland which is not significant to farming;

(b) The area of the affected alluvial valley floor is small and provides or may provide only negligible support for production from one or more farms; or

(c) The prohibition against mining the coal in the alluvial valley floor does not substantially decrease the value of, or prevent the successful mining of, other coal that would have been developed in conjunction with the coal in the alluvial valley floor.

§ 3437.2 Exchange procedures.

(a) The Secretary shall evaluate each qualified exchange request and determine whether the exchange proponent is qualified and whether a request is appropriate and is in the public interest.

(b) Qualified requests shall be processed in accordance with the regulations of subpart 2200 of this title subject to the provisions of this subpart.

(c) The coal deposits offered in exchange by the Secretary shall be assessed as acceptable for leasing under the criteria of the Geological Survey, and acceptable for further consideration for leasing under the criteria in § 3420.2-3 of this title, including the unsuitability criteria in subpart 3461 of this title.

(d) Exchange under this subpart, whether proposed by the Secretary or by a qualified exchange proponent, may include the coal estate, the entire mineral estate, or the entire mineral and surface estates in the lands conveyed to the United States or in the lands conveyed by the United States.

PART 3440—LICENSES TO MINE

Subpart 3440—Licenses to Mine

Sec.
3440.0-3 Authority.
3440.1 Terms.
3440.1-1 Forms.
3440.1-2 Qualifications.
3440.1-3 Limitations on coal use.
3440.1-4 Area and duration of license.
3440.1-5 Payments and reports.
3440.1-6 Compliance with Surface Mining Control and Reclamation Act.

Authority: 30 U.S.C. 181 et seq.

Subpart 3440—Licenses to Mine

§ 3440.0-3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement section 8 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 208).

§ 3440-1. Terms.

§ 3440.1-1 Forms.

(a) Four copies of the application for a license to mine coal for domestic needs or for a renewal of such a license shall be filed on a form approved by the Director, or a substantial equivalent of the form, in the Bureau of Land Management State Office having jurisdiction over the lands involved (43 CFR Subpart 1821).

(b) The original application or any renewal application shall be accompanied by the fee prescribed in section 3473 of this title, except when the application is filed by a relief agency.

§ 3440.1-2 Qualifications.

(a) An individual, association or individuals, municipality, charitable organization or relief agency may hold a license to mine. A municipality shall file the information required under § 3472.2-5(b) of this title.

(b) A license to mine shall not be issued to a private corporation.

(c) A license to mine shall not be issued to a minor, but may be issued to a legal guardian on behalf of a minor.

§ 3440.1-3 Limitations on coal use.

(a) A license to mine may be issued to a municipality for the nonprofit mining and disposal of coal to its residents for household use only. Under such a license, a municipality may not mine coal either for its own use or for nonhousehold use such as for factories, stores, other business establishments and heating and lighting plants.

(b) Coal extracted under a license to mine shall not be disposed of for profit.

§ 3440.1-4 Area and duration of license.

(a) A license to mine for an individual or association in the absence of unusual conditions or necessity, shall be limited to a legal subdivision of 40 acres or less and may be revoked at any time. Each license to mine shall terminate at the end of 2 years from the date of issuance, unless an application for a 2 year renewal is filed and approved before its termination date.

(b) A license to mine to a municipality may not exceed 320 acres for a municipality of less than 100,000 population, 1,280 acres for a municipality between 100,000 and 150,000 population, and 2,560 acres for a municipality of 150,000 population or more. A license to mine to a municipality shall terminate at the end of 4 years from the date of issuance, unless an application for a 4 year renewal is filed and approved before the termination date.

(c)(1) The authorized officer may authorize a recognized and established relief agency of any state upon the agency's request, to take government-owned coal deposits within the state and provide the coal to localities where it is needed to supply families on the rolls of such agency who require coal for household use but are unable to pay for that coal.

(2) Tracts shall be selected in areas assessed as acceptable for mining operations and at points convenient to supply the families in a locality. Each family shall be restricted to the amount of coal actually needed for its use, not to exceed 20 tons annually.

(3) Coal shall be taken from such tracts only by those with written authority from the relief agency. All mining shall be done pursuant to such authorization. All Federal and state laws and regulations for the safety of miners, prevention of fires and of waste, etc., shall be observed. The relief agency shall see that the premises are left in a safe condition for future mining operations.

§ 3440.1-5 Payments and reports.

(a) No rental or royalty shall be required.

(b) Each holder of a license to mine shall provide an annual report to the appropriate Bureau of Land Management State Office describing all operation conducted under such license.

§ 3440.1-6 Compliance with Surface Mining Control and Reclamation Act.

Mining on a license to mine shall not commence without a permit issued by the regulatory authority unless the operation is exempt from the permit requirements under 30 CFR 700.11.

PART 3450—MANAGEMENT OF EXISTING LEASES

Subpart 3451—Continuation of Leases—Readjustment of Terms

Sec.
3451.1 Readjustment of lease terms.
3451.2 Notification of readjusted lease terms.

Subpart 3452—Relinquishment, Cancellation, and Termination

3452.1 Relinquishment.
3452.1-1 General.
3452.1-2 Where filed.
3452.1-3 Acceptance.
3452.2 Cancellation.
3452.2-1 Cause for cancellation.
3452.2-2 Cancellation procedure.
3452.3 Termination.

Subpart 3453—Transfers by Assignment, Sublease or Otherwise

3453.1Qualifications.
3453.1-1 Who may transfer or receive a transfer.
3453.1-2 Number of copies required.
3453.1-3 Sole party in interest.
3453.1-4 Attorney-in-fact.
3453.1-5 Heirs and devises.
3453.2 Requirements.
3453.2-1 Application.
3453.2-2 Forms and statements.
3453.2-3 Filing location and fee.
3453.2-4 Bonds.
3453.2-5 Description of lands.
3453.2-6 Effect of partial assignment.
3453.3 Approval.
3453.3-1 Conditions for approval.
3453.3-2 Disapproval of transfers.
3453.3-3 Effective date.
3453.3-4 Extensions.

Authority: 30 U.S.C. 181 et seq.; 30 U.S.C. 351-359; 30 U.S.C. 521-531; 30 U.S.C. 1201 et seq.; 42 U.S.C. 7101 et seq.; and 43 U.S.C. 1701 et seq.

Subpart 3451—Continuation of Leases—Readjustment of Terms

§ 3451.1 Readjustment of lease terms.

(a)(1) All leases issued prior to August 4, 1976, shall be subject to readjustment at the end of the current 20-year period and at the end of each 10-year period thereafter. All leases issued after August 4, 1976, shall be subject to readjustment at the end of the first 20-year period and, if the lease is extended, each 10-year period thereafter.

(2) Any lease subject to readjustment which contains a royalty rate less than the minimum royalty prescribed in § 3473.3-2 of this title shall be readjusted to conform to the minimum prescribed in that section.

(3) Each lease shall be readjusted to provide that it is subject to the unsuitability criteria set out in subpart 3461 of this title.

(b) The authorized officer shall notify the lessee whether or not any readjustment of terms and conditions is to be made. If feasible, the authorized officer shall so notify the lessee of any lease which becomes subject to readjustment prior to June 1, 1980, before the expiration of the current 20-year period.

(c) If the lease became subject to readjustment of terms and conditions before August 4, 1976, but the authorized officer prior to that date neither readjusted the terms and conditions nor informed the lessee whether or not a readjustment would be made, the terms and conditions of that lease shall be readjusted to conform to the requirements of the Federal Coal Leasing Amendments Act of 1976, and to conform expressly to the provisions for diligent development and continued operation in § 3475.6 of this title.

(d)(1) The authorized officer shall, prior to the expiration of the current or initial 20-year period or any succeeding 10-year period thereafter, notify the lessee of any lease which becomes subject to readjustment after June 1, 1980, whether any readjustment of terms and conditions will be made prior to the expiration of the initial 20-year period or any succeeding 10-year period thereafter. On such a lease the failure to so notify the lessee shall mean that the United States is waiving its right to readjust the lease for the readjustment period in question.

(2) In any notification that a lease will be readjusted under this subsection, the

authorized officer shall prescribe when the notice of readjusted lease terms shall be transmitted to the lessee. This time shall be as soon as possible after notice that the lease shall be readjusted, but shall not be longer than 2 years after such notice. Failure to transmit the notice of readjusted lease terms in the specified period shall constitute a waiver of the right to readjust, unless the delay is caused by events beyond the control of the Department.

(e) In the notification that the lease will be readjusted, the authorized officer may require the lessee to furnish information specified in § 3422.3–4 of this title for review by the Attorney General as required by section 27(1) of the Mineral Leasing Act of 1920, as amended. If the authorized officer requests the information specified, no lease readjustment shall be effective until 30 days after the authorized officer has transmitted the required information to the Attorney General. The lease shall be subject to cancellation if the lessee fails to furnish the required information within the time allowed.

§ 3451.2 Notification of readjusted lease terms.

(a) If the notification that the lease will be readjusted did not contain the proposed readjusted lease terms, the authorized officer shall, within the time specified in the notice that the lease shall be readjusted, notify the lessee of the proposed readjusted lease terms.

(b) The notification of readjusted lease terms shall also notify the lessee that if he does not file either an objection to the proposed readjustment or a relinquishment of the lease within 60 days after receipt of notice of the proposed readjusted terms from the authorized officer, the terms of such readjustment shall be considered agreed upon.

(c) The notification of readjusted lease terms shall specify the procedures to be followed if the lessee objects to the proposed readjusted lease terms.

(d) The readjusted lease terms shall become effective either 60 days after the lessee is notified of them, or 30 days after the authorized officer transmits the required information to the Attorney General, whichever is later.

(e) In any case of an appeal from the notice of readjusted lease terms, the authorized officer may, consistent with 43 CFR 4.21(a), provide that the decision is effective pending the outcome of the appeal.

Subpart 3452—Relinquishment, Cancellation and Termination

§ 3452.1 Relinquishment.

§ 3452.1–1 General.

Upon a satisfactory showing that the public interest shall not be impaired, the lessee may surrender the entire lease, a legal subdivision thereof, an aliquot part thereof (not less than 10 acres), or any bed of the coal deposits therein. A partial relinquishment shall describe clearly the surrendered parcel or coal deposits and give the exact acreage relinquished (see 43 CFR 3475.5(c)).

§ 3452.1–2 Where filed.

A relinquishment shall be filed in triplicate by the lessee in the Bureau of Land Management State Office having jurisdiction over the lands involved (43 CFR Subpart 1821).

§ 3452.1–3 Acceptance.

The relinquishment shall be effective on the date that the authorized officer determines that all accrued rentals and royalties have been paid and that all the obligations of the lessee under the regulations and terms of the lease have been met.

§ 3452.2 Cancellation.

§ 3452.2–1 Cause for cancellation.

(a) The authorized officer, after compliance with § 3452.2–2 of this title, may take the appropriate steps to institute proceedings in a court of competent jurisdiction for the cancellation of the lease if the lessee: (1) fails to comply with the provisions of the Mineral Leasing Act of 1920, as amended; (2) fails to comply with the general regulations in force on the date of the lease or in force on the effective date of any readjustment of the terms and conditions of the lease, or with regulations issued after lease issuance and readjustment but made applicable under the terms of the lease; or (3) defaults in the performance of any of the terms, covenants, and stipulations of the lease.

(b) A waiver of any particular default, breach or cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other default, breach or cause of forfeiture, or for the same cause occurring at any other time.

(c) Any lease issued before August 4, 1976, on which the lessee does not meet the diligent development requirements or any lease whenever issued on which the lessee does not meet the continued operation requirements shall be subject to cancellation in whole or in part. In deciding whether to initiate lease cancellation proceedings under this subsection, the Secretary shall not consider adverse circumstances which arise out of (1) normally foreseeable costs of compliance with requirements for environmental protection; (2) commonly experienced delays in delivery of supplies or equipment; or (3) inability to obtain sufficient sales.

§ 3452.2–2 Cancellation procedure.

The lessee shall be given notice of any default, breach or cause of forefeiture and be afforded 30 days to correct the default, to request an extension of time in which to correct the default, or to submit evidence showing why the lease should not be cancelled.

§ 3452.3 Termination.

(a) Any lease issued after August 4, 1976, shall be terminated if the lessee does not meet the diligent development requirements.

(b) Should a lease be cancelled or terminated for any reason, all deferred bonus payments shall be immediately payable and all rentals and royalties, including advance royalties, already paid or due, shall be forfeited to the United States.

Subpart 3453—Transfers by Assignment, Sublease or Otherwise

§ 3453.1 Qualifications.

§ 3453.1–1 Who may transfer or receive a transfer.

(a) Leases may be transferred in whole or in part to any person, association or corporation qualified to hold such leases, except as provided by §§ 3420.1–4(b)(1)(iv) and 3420.1–4(b)(2)(ii) of this title.

(b) A minor is not qualified to hold a lease in his own name and a transfer to a minor in his own name shall not be approved. However, a transfer in behalf of a minor, including a minor heir or devisee of a lessee, to a legal guardian or trustee may be approved.

§ 3453.1–2 Number of copies required.

A single signed copy of the qualifications required under subpart 3472 of this title is sufficient.

§ 3453.1–3 Sole party in interest.

The transferee or transferees shall comply with § 3472.2–1 of this title.

§ 3453.1–4 Attorney-in-fact.

The attorney-in-fact shall comply with § 3472.2–3 of this title.

§ 3453.1–5 Heirs and devisees.

An appropriate showing as required under § 3472.2–4 of this title shall be furnished before the heirs or devisees of

a deceased holder of a lease, operating agreement, or royalty interest in a lease can be recognized by the Secretary as the new holders of a lease, agreement, or interest.

§ 3453.2 Requirements.

§ 3453.2-1 Application.

Applications for approval of any transfer of a lease or any interest in a lease, whether by direct assignment, working agreement, transfer of royalty interest, sublease, or otherwise, shall be filed within 90 days from final execution.

§ 3453.2-2 Forms and statements.

(a) Transfers of any record title interest shall be filed in triplicate.

(b) No specific form need be used for requests for approval of transfers. The application shall contain evidence of the transferee's qualifications, including a statement of Federal coal lease acreage holdings. This evidence shall consist of the same showing of qualifications required of a lease applicant by subpart 3472 of this title.

(c) A separate instrument of transfer shall be filed for each lease when transfers involve record titles. When transfers to the same person, association, or corporation involving more than one lease are filed at the same time, one request for approval and one showing as to the qualifications of the transferee shall be sufficient.

(d) A single signed copy of all other instruments of transfer is sufficient, except that collateral assignments and other security or mortgage documents shall not be accepted for filing.

(e) Any transfer of a record title interest or assignment of operating rights shall be accompanied by the transferee's submission of the information specified in § 3422.3-4 of this title, including the holdings of any affiliate(s) (including joint ventures) of the transfers, or a statement incorporating a prior submission of the specified information by reference to the date and lease serial number of the submission, and containing any and all changes in holdings since the date of the prior submission.

(f) Any document of transfer which does not contain a description of all consideration or value paid or promised for the transfer shall be accompanied by a separate statement of all consideration or value, whether cash, property, future payments or any other type of consideration, paid or promised for the transfer.

(g) Information submitted to comply with subsections (e) and (f) of this section may be labeled as proprietary data and shall be so treated, consistent with the Freedom of Information Act.

§ 3453.2-3 Filing location and fee.

An application for approval of a transfer shall be filed in the Bureau of Land Management State Office having jurisdiction over the leased lands proposed for transfer (43 CFR Subpart 1821). Each application shall be accompanied by a nonrefundable filing fee (43 CFR 3473.2).

§ 3453.2-4 Bonds.

(a) If a bond is required, it shall be furnished before a lease transfer may be approved. The consent of the surety to the substitution of the transferee as principal or a new bond with the transferee as principal shall be submitted if the original lease required the maintenance of a bond. If the transfer is for part of the leased land only, it shall be for a legal subdivision and (1) the consent of the surety to the transfer and its agreement to remain bound as to the interest retained by the lessee shall be submitted, as well as (2) a new bond with the transferee as principal covering the portion of the leased lands transferred.

(b) The person transferring a lease, including a sublessee, and the surety for the lease shall continue to be responsible for the performance of any obligation under the lease until the effective date of the approval of the transfer. If the transfer is not approved, their obligation to the United States shall continue as though no such transfer had been filed for approval. After the effective date of approval, the transferee, including any sublessee, and the transferee's surety shall be responsible for all lease obligations notwithstanding any terms in the transfer to the contrary.

§ 3453.2-5 Description of lands.

The description of the lands involved in the instrument of transfer shall match the description of lands in the lease. The transfer of only a part of the lands shall be permitted only where it is demonstrated that each remaining lease area is a logical mining unit or part of a logical mining unit.

§ 3453.2-6 Effect of partial assignment.

The approval of a transfer of only a part of the lands in a lease shall create a new lease, bearing a new serial number, but containing the same terms and conditions as the original lease. A lease so created shall be deemed a logical mining unit.

§ 3453.3 Approval.

§ 3453.3-1 Conditions for approval.

No transfer shall be approved if:

(a) the transferee is not qualified to hold a lease or an interest in a lease under subpart 3472 of this title, or under §§ 3420.1-4(b)(1)(iv) and 3420.1-4(b)(2)(ii) of this title;

(b) the lease bond is insufficient;

(c) the filing fee has not been submitted;

(d) the transferee would hold the lease in violation of the acreage requirements set out in subpart 3472 of this title;

(e) the transfer would create an overriding royalty interest in violation of § 3473.3 of this title;

(f) the lease account is not in good standing; or

(g) the information required under § 3453.2-2 (e) or (f) of this title has not been submitted.

§ 3453.3-2 Disapproval of transfers.

(a) The authorized officer shall deny an application for approval of a transfer if any reason why the transfer cannot be approved (listed in § 3453.3-1 of this title) is not cured within the time established by the authorized officer in a decision notifying the applicant for approval why the transfer cannot be approved.

(b)(1) The authorized officer shall not approve a transfer until 30 days after the Attorney General receives the notice and statement of the transferee's coal holdings, or until the Attorney General notifies the authorized officer that the transfer would not create or maintain a situation inconsistent with the antitrust laws, whichever comes first. If the Attorney General notifies the authorized officer that the statement of coal holdings is not complete or accurate, the 30 day period shall stop running on the date of such notification and shall not resume running until the Attorney General receives the supplemental information.

(2) The authorized officer shall not approve the transfer if, during the 30 day period, the Attorney General notifies the authorized officer that the lease transfer would create or maintain a situation inconsistent with the antitrust laws, except after complying with subsection (b)(3) of this section.

(3) If the Attorney General notifies the authorized officer that a transfer should not be approved, the authorized officer shall disapprove the transfer unless, after a public hearing is conducted on the record in accordance with the Administrative Procedure Act, the authorized officer determines that:

(i) approval of the transfer is necessary to carry out the purposes of the Federal Coal Leasing Amendments Act of 1976;

(ii) approval of the transfer is in the public interest; and

(iii) there are no reasonable alternatives to approval of the transfer consistent with the Federal Coal Leasing Amendments Act of 1976, the antitrust laws and the public interest.

§ 3453.3-3 Effective date.

A transfer shall take effect the first day of the month following its final approval by the Bureau of Land Management, or if the transferee requests, the first day of the month of the approval.

§ 3453.3-4 Extensions.

The filing of or approval of any transfer shall not alter any terms or extend any time periods under the lease, including those dealing with readjustment of the lease and the diligent development and continued operation on the lease.

PART 3460—ENVIRONMENT

Subpart 3461—Federal Lands Review—Unsuitability for Mining

Sec.

3461.0-3 Authority.
3461.0-6 Policy.
3461.0-7 Scope.
3461.1 Criteria for assessing lands unsuitable for all or certain stipulated methods of coal mining.
3461.2 Underground mining exception from criteria.
3461.3 Unsuitability assessment procedures.
3461.3-1 Assessment and land use planning.
3461.3-2 Consultation on unsuitability assessments:
3461.3-3 Findings.
3461.4 Relationship of leasing to unsuitability assessment.
3461.4-1 Application of criteria on unleased lands.
3461.4-2 Application of criteria on leased lands.
3461.5 Petitions to designate lands.
3461.6 Exploration.

Subpart 3465—Surface Management and Protection

3465.0-1 Purpose.
3465.0-2 Objective.
3465.0-3 Authority.
3465.0-7 Applicability.
3465.1 Use of surface.
3465.2 Obligations and standards of performance.
3465.3 Inspections and noncompliance.
3465.3-1 Inspections.
3465.3-2 Discovery of noncompliance.
3465.3-3 Failure of lessee or holder of license to mine to act.
3465.4 Alternative postmining land use.
3465.5 Bonding.
3465.6 Conduct, completion, and abandonment of operations.

Authority: 30 U.S.C. 181 et seq.; 30 U.S.C. 351-359; 30 U.S.C. 521-531; 30 U.S.C. 1201 et seq.; and 43 U.S.C. 1701 et seq.

Subpart 3461—Federal Lands Review—Unsuitability for Mining

§ 3461.0-3 Authority.

(a) These regulations are issued under the authority of the statutes listed in § 3400.0-3 of this title.

(b) These regulations primarily implement:

(1) The general unsuitability criteria in section 522(a) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(a));

(2) The Federal lands review in section 522(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(b)); and

(3) The prohibitions against mining certain lands in section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(e)).

§ 3461.0-6 Policy.

The Department shall carry out the review of Federal lands under section 522(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(b)) principally through land use planning assessments by the surface management agency regarding the unsuitability of Federal lands for all or certain stipulated methods of coal mining.

§ 3461.0-7 Scope.

Each criterion in § 3461.1 of this title uses the phrase "shall be considered unsuitable" as shorthand for "shall be considered unsuitable for all or certain stipulated methods of coal mining involving surface coal mining operations, as defined in § 3400.0-5(vv) of this title. The manner in which the criteria are phrased does not diminish the scope of the general underground mining exception (43 CFR 3461.2), or the obligation of the authorized officer to describe in the comprehensive land use plan or land use analysis whether lands assessed as unsuitable are unsuitable for all or only certain stipulated methods of coal mining (43 CFR 3420.2-3(c), 3461.3).

§ 3461.1 Criteria for assessing lands unsuitable for all or certain stipulated methods of coal mining.

(a)(1) *Criterion Number 1.* All Federal lands included in the following land systems or categories shall be considered unsuitable: National Park System, National Wildlife Refuge System, National System of Trails, National Wilderness Preservation System, National Wild and Scenic Rivers System, National Recreation Areas, lands acquired with money derived from the Land and Water Conservation Fund, National Forests, and Federal lands in incorporated cities, towns, and villages. All Federal lands which are recommended for inclusion in any of the above systems or categories by the administration in legislative proposals submitted to the Congress or which are required by statute to be studied for inclusion in such systems or categories shall be considered unsuitable.

(2) *Exceptions.* (i) A lease may be issued within the boundaries of any National Forest if the Secretary finds no significant recreational, timber, economic or other values which may be incompatible with the lease; and (A) surface operations and impacts are incident to an underground coal mine, or (B) where the Secretary of Agriculture determines, with respect to lands which do not have significant forest cover within those National Forests west of the 100th meridian, that surface mining may be in compliance with the Multiple-Use Sustained-Yield Act of 1960, the Federal Coal Leasing Amendments Act of 1976 and the Surface Mining Control and Reclamation Act of 1977. (ii) A lease may be issued within the Custer National Forest with the consent of the Department of Agriculture as long as no surface coal mining operations are permitted.

(3) *Exemptions.* The application of this criterion to lands within the listed land systems and categories is subject to valid existing rights, and does not apply to surface coal mining operations existing on August 3, 1977. The application of the portion of this criterion applying to land proposed for inclusion in the listed systems does not apply to lands: to which substantial legal and financial commitments were made prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(b)(1) *Criterion Number 2.* Federal lands that are within rights-of-way or easements or within surface leases for residential, commercial, industrial, or other public purposes, or for agricultural crop production on Federally owned surface shall be considered unsuitable.

(2) *Exceptions.* A lease may be issued, and mining operations approved, in such areas if the surface management agency determines that:

(i) All or certain types of coal development (e.g., underground mining)

will not interfere with the purpose of the right-of-way or easement; or

(ii) The right-of-way or easement was granted for mining purposes; or

(iii) The right-of-way or easement was issued for a purpose for which it is not being used; or

(iv) The parties involved in the right-of-way or easement agree, in writing, to leasing; or

(v) It is impractical to exclude such areas due to the location of coal and method of mining and such areas or uses can be protected through appropriate stipulations.

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(c)(1) *Criterion Number 3.* Federal lands affected by section 522(e) (4) and (5) of the Surface Mining Control and Reclamation Act of 1977 shall be considered unsuitable. This includes lands within 100 feet of the outside line of the right-of-way of a public road or within 100 feet of a cemetery, or within 300 feet of any public building, school, church, community or institutional building or public park or within 300 feet of an occupied dwelling.

(2) *Exceptions.* A lease may be issued for lands:

(i) Used as mine access roads or haulage roads that join the right-of-way for a public road;

(ii) For which the Office of Surface Mining Reclamation and Enforcement has issued a permit to have public roads relocated;

(iii) For which owners of occupied buildings have given written permission to mine within 300 feet of their buildings.

(3) *Exemptions.* The application of this criterion is subject to valid existing rights, and does not apply to surface coal mining operations existing on August 3, 1977.

(d)(1) *Criterion Number 4.* Federal lands designated as wilderness study areas shall be considered unsuitable while under review by the Administration and the Congress for possible wilderness designation. For any Federal land which is to be leased or mined prior to completion of the wilderness inventory by the surface management agency, the environmental assessment or impact statement on the lease sale or mine plan shall consider whether the land possesses the characteristics of a wilderness study area. If the finding is affirmative, the land shall be considered unsuitable, unless issuance of noncompetitive coal leases and mining on leases is authorized under the Wilderness Act and the Federal Land Policy and Management Act of 1976.

(2) *Exemption.* The application of this criterion to lands for which the Bureau of Land Management is the surface management agency and lands in designated wilderness areas in National Forests is subject to valid existing rights.

(e)(1) *Criterion Number 5.* Scenic Federal lands designated by visual resource management analysis as Class I (an area of outstanding scenic quality or high visual sensitivity) but not currently on the National Register of Natural Landmarks shall be considered unsuitable. A lease may be issued if the surface management agency determines that surface coal mining operations will not significantly diminish or adversely affect the scenic quality of the designated area.

(2) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(f)(1) *Criterion Number 6.* Federal lands under permit by the surface management agency, and being used for scientific studies involving food or fiber production, natural resources, or technology demonstrations and experiments shall be considered unsuitable for the duration of the study, demonstration or experiment, except where mining could be conducted in such a way as to enhance or not jeopardize the purposes of the study, as determined by the surface management agency, or where the principal scientific user or agency gives written concurrence to all or certain methods of mining.

(2) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(g)(1) *Criterion Number 7.* All districts, sites, buildings, structures, and objects of historic, architectural, archeological, or cultural significance on Federal lands which are included in or eligible for inclusion in the National Register of Historic Places, and an appropriate buffer zone around the outside boundary of the designated property (to protect the inherent values of the property that make it eligible for listing in the National Register) as determined by the surface management agency, in consultation with the Advisory Council on Historic Preservation and the State Historic Preservation Office shall be considered unsuitable.

(2) *Exceptions.* All or certain stipulated methods of coal mining may be allowed if the surface management agency determines, after consultation with the Advisory Council on Historic Preservation and State Historic Preservation Office that the direct and indirect effects of mining, as stipulated, on a property in or eligible for the National Register of Historic Places will not result in significant adverse impacts to the property.

(3) *Exemptions.* The application of this criterion to a property listed in the National Register is subject to valid existing rights, and does not apply to surface coal mining operations existing on August 3, 1977. The application of the criterion to buffer zones and properties eligible for the National Register does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(h)(1) *Criterion Number 8.* Federal lands designated as natural areas or as National Natural Landmarks shall be considered unsuitable.

(2) *Exceptions.* A lease may be issued and mining operation approved in an area or site if the surface management agency determines that:

(i) With the concurrence of the state, the area or site is of regional or local significance only;

(ii) The use of appropriate stipulated mining technology will result in no significant adverse impact to the area or site; or

(iii) The mining of the coal resource under appropriate stipulations will enhance information recovery (e.g., paleontological sites).

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which includes operations on which a permit has been issued.

(i)(1) *Criterion Number 9.* Federally designated critical habitat for threatened or endangered plant and animal species, and habitat for Federal threatened or endangered species which is determined by the Fish and Wildlife Service and the surface management

agency to be of essential value and where the presence of threatened or endangered species has been scientifically documented, shall be considered unsuitable.

(2) *Exception.* A lease may be issued and mining operations approved if, after consultation with the Fish and Wildlife Service, the Service determines that the proposed activity is not likely to jeopardize the continued existence of the listed species and/or its critical habitat.

(j)(1) *Criterion Number 10.* Federal lands containing habitat determined to be critical or essential for plant or animal species listed by a state pursuant to state law as endangered or threatened shall be considered unsuitable.

(2) *Exception.* A lease may be issued and mining operations approved if, after consultation with the state, the surface management agency determines that the species will not be adversely affected by all or certain stipulated methods of coal mining.

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(k)(1) *Criterion Number 11.* A bald or golden eagle nest or site on Federal lands that is determined to be active and an appropriate buffer zone of land around the nest site shall be considered unsuitable. Consideration of availability of habitat for prey species and of terrain shall be included in the determination of buffer zones. Buffer zones shall be determined in consultation with the Fish and Wildlife Service.

(2) *Exceptions.* A lease may be issued if:

(i) It can be conditioned in such a way, either in manner or period of operation, that eagles will not be disturbed during breeding season; or

(ii) The surface management agency, with the concurrence of the Fish and Wildlife Service, determines that the golden eagle nest(s) will be moved.

(iii) Buffer zones may be decreased if the surface management agency determines that the active eagle nests will not be adversely affected.

(l)(1) *Criterion Number 12.* Bald and golden eagle roost and concentration areas on Federal lands used during migration and wintering shall be considered unsuitable.

(2) *Exception.* A lease may be issued if the surface management agency determines that all or certain stipulated methods of coal mining can be conducted in such a way, and during such periods of time, to ensure that eagles shall not be adversely disturbed.

(m)(1) *Criterion Number 13.* Federal lands containing a falcon (excluding kestrel) cliff nesting site with an active nest and a buffer zone of Federal land around the nest site shall be considered unsuitable. Consideration of availability of habitat for prey species and of terrain shall be included in the determination of buffer zones. Buffer zones shall be determined in consultation with the Fish and Wildlife Service.

(2) *Exception.* A lease may be issued where the surface management agency, after consultation with the Fish and Wildlife Service, determines that all or certain stipulated methods of coal mining will not adversely affect the falcon habitat during the periods when such habitat is used by the falcons.

(n)(1) *Criterion Number 14.* Federal lands which are high priority habitat for migratory bird species of high Federal interest on a regional or national basis, as determined jointly by the surface management agency and the Fish and Wildlife Service, shall be considered unsuitable.

(2) *Exception.* A lease may be issued where the surface management agency, after consultation with the Fish and Wildlife Service, determines that all or certain stipulated methods of coal mining will not adversely affect the migratory bird habitat during the periods when such habitat is used by the species.

(o)(1) *Criterion Number 15.* Federal lands which the surface management agency and the state jointly agree are fish and wildlife habitat for resident species of high interest to the state and which are essential for maintaining these priority wildlife species shall be considered unsuitable. Examples of such lands which serve a critical function for the species involved include:

(i) Active dancing and strutting grounds for sage grouse, sharp-tailed grouse, and prairie chicken;

(ii) Winter ranges most critical for deer, antelope, and elk; and

(iii) Migration corridors for elk.

A lease may be issued if, after consultation with the state, the surface management agency determines that all or certain stipulated methods of coal mining will not have a significant long-term impact on the species being protected.

(2) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(p)(1) *Criterion Number 16.* Federal lands in riverine, coastal, and special floodplains (100-year recurrence interval) shall be considered unsuitable unless, after consultation with Geological Survey, the surface management agency determines that all or certain stipulated methods of coal mining can be undertaken without substantial threat of loss to people or property, and to the natural and beneficial values of the floodplain on the lease tract and downstream.

(2) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(q)(1) *Criterion Number 17.* Federal lands which have been committed by the surface management agency to use as municipal watersheds shall be considered unsuitable.

(2) *Exception.* A lease may be issued where:

(i) The surface management agency determines, as a result of studies, that all or certain stipulated methods of coal mining will not adversely affect the watershed to any significant degree; and

(ii) The municipality (incorporated entity) or the responsible governmental unit concurs in writing in the issuance of the lease.

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(r)(1) *Criterion Number 18.* Federal lands with National Resource Waters, as identified by states in their water quality management plans, and a buffer zone of Federal lands ¼ mile from the outer edge of the far banks of the water, shall be unsuitable.

(2) *Exception.* The buffer zone may be eliminated or reduced in size where the surface management agency determines that it is not necessary to protect the National Resource Waters.

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(s)(1) *Criterion Number 19.* Federal lands identified by the surface management agency, in consultation with the state in which they are located, as alluvial valley floors according to the definition in § 3400.0–5(a) of this title, the standards in 30 CFR Part 822, the final alluvial valley floor guidelines of the Office of Surface Mining Reclamation and Enforcement when published, and approved state programs under the Surface Mining Control and Reclamation Act of 1977, where mining would interrupt, discontinue, or preclude farming, shall be considered unsuitable. Additionally, when mining Federal land outside an alluvial valley floor would materially damage the quantity or quality of water in surface or underground water systems that would supply alluvial valley floors, the land shall be considered unsuitable.

(2) *Exemptions.* This criterion does not apply to surface coal mining operations which produced coal in commercial quantities in the year preceding August 3, 1977, or which had obtained a permit to conduct surface coal mining operations.

(t)(1) *Criterion Number 20.* Federal lands in a state to which is applicable a criterion (i) proposed by that state, and (ii) adopted by rulemaking by the Secretary, shall be considered unsuitable.

(2) *Exceptions.* A lease may be issued when:

(i) Such criterion is adopted by the Secretary less than 6 months prior to the publication of the draft comprehensive land use plan or land use analysis, plan, or supplement to a comprehensive land use plan, for the area in which such land is included, or

(ii) After consultation with the state, the surface management agency determines that all or certain stipulated methods of coal mining will not adversely affect the value which the criterion would protect.

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

§ 3461.2 Underground mining exemption from criteria.

(a) Federal lands with coal deposits that would be mined by underground mining methods shall not be assessed as unsuitable where there would be no surface coal mining operations, as defined in § 3400.0–5 of this title, on any lease, if issued.

(b) Where underground mining will include surface operations and surface impacts on Federal lands to which a criterion applies, the lands shall be assessed as unsuitable unless the surface management agency finds that a relevant exception or exemption applies. Surface impacts include surface occupancy, subsidence, fire, and other environmental impacts of underground mining which are manifested on the surface.

§ 3461.3 Unsuitability assessment procedures.

§ 3461.3–1 Assessment and land use planning.

(a)(1) The authorized officer of the surface management agency shall describe in the comprehensive land use plan or land use analysis the results of the application of each of the unsuitability criteria. Exceptions should only be considered when an unsuitability condition exists in an area free of other unsuitability conditions, and for which the responsible official would otherwise regard coal mining as a likely use. Should the authorized officer further determine that conditions for an exception exist, the authorized officer shall state each area to which an exception has been applied. The authorized officer shall state in the plan or analysis those areas which could be leased only subject to conditions or stipulations to conform to the application of the criteria or exceptions.

(2) At such time as the criteria and exceptions are applied in land use planning, the authorized officer shall invite public comment thereon through a notice published in the Federal Register and a newspaper of general circulation in the area covered by the plan or analysis. The notice shall announce the availability of a map or maps displaying those areas:

(i) to which no criteria would apply;

(ii) to which a criterion or criteria cannot be applied pending collection of data under paragraph (b) below;

(iii) to which a criterion would apply;

(iv) to which a criterion would apply where the authorized officer does not intend to consider an exception; and

(v) to which a criterion and an exception thereto have been applied.

(b)(1) The authorized officer shall make his assessment on the best available data that can be obtained given the time and resources available to prepare the plan. The comprehensive land use plan or land use analysis shall include an indication of the adequacy and reliability of the data involved. Where either a criterion or exception (when under subsection (a) of this section the authorized officer decides that application of an exception is appropriate) cannot be applied during the land use planning process because of inadequate or unreliable data, the plan or analysis shall discuss the reasons therefor and disclose when activity planning, or, in the case of criterion 19, prior to approval of a permit, the data needed to make an assessment with reasonable certainty would be generated. The authorized officer shall make every effort within the time and resources available to collect adequate and reliable data which would permit the application of criterion 19 in the land use or activity planning process. When those data are obtained, the authorized officer shall make public his assessment on the application of the criterion or, if appropriate, the exception and the reasons therefor and allow opportunity for public comment.

(2) No lease tract shall be analyzed in a final regional lease sale environmental impact statement prepared under § 3420.4–5 of this title without significant data material to the application to the tract of each criterion described in § 3461.1 of this title, except, where necessary, criterion 19. If the data are lacking for the application of a criterion or exception to only a portion of the tract, and if the authorized officer determines that it is likely that stipulations in the lease or permit to conduct surface coal mining operations could avoid any problems which may result from subsequent application of the criterion or exception, such tract may be included and analyzed in the regional lease sale environmental impact statement.

(c) Any unsuitability assessments which result either from a designation or a termination of a designation of Federal lands as unsuitable by the Office of Surface Mining Reclamation and Enforcement, or from changes warranted by additional data acquired in the activity planning process, may be made without formally revising or amending the comprehensive land use plan or analysis.

§ 3461.3–2 Consultation on unsuitability assessments.

(a) Prior to adopting a comprehensive land use plan or land use analysis which assesses Federal lands as unsuitable for coal mining, the Secretary or other surface management agency shall complete the consultation set out in § 3420.2–6 of this title.

(b) When consultation or concurrence is required in the application of any criterion or exception in § 3461.1 of this

title, the request for advice or concurrence, and the reply thereto, shall be in writing. Unless another period is provided by law, the authorized officer shall specify that the requested advice, concurrence or nonconcurrence be made within 30 days. Extensions of time that do not jeopardize the planning schedule may be granted for reply.

(c) When the authorized officer does not receive a response either to a request for concurrence which is required by this subpart but not by law, or to consultation within the specified time, he or she may proceed as though concurrence had been given or consultation had occurred. If the authorized officer takes action not in accordance with advice received in consultation under this subpart, he or she shall set forth the reasons therefor in the comprehensive land use plan, land use analysis or other document containing the results of the application of the specific unsuitability criterion or exception.

§ 3461.3-3 Findings.

When the authorized officer assesses the Federal lands as unsuitable, the authorized officer shall prepare a statement for such lands on the potential coal resources, the demand for coal resources, and the impact of such designation on the environment, the economy, and the supply of coal.

§ 3461.4 Relationship of leasing to unsuitablity assessment.

§ 3461.4-1 Application of criteria on unleased lands.

(a) The unsuitability criteria shall be applied, prior to lease issuance, to all lands leased after the issuance of these regulations, including lands in noncompetitive (preference right) leases, applications and applications for leases under subpart 3425 of this title.

(b) The unsuitability criteria shall be initially applied either:

(1) During land use planning or the environmental assessment conducted for a specific lease application, lease modification, or preference right lease application under either § 3425.2 or § 3430.3 of this title; or

(2) During land use planning under the provisions of § 3420.1-5 of this title.

§ 3461.4-2 Application of criteria on leased lands.

(a) The unsuitability criteria shall be applied to all non-producing leases, issued prior to the effective date of these regulations. The Bureau of Land Management may await the lessee's submission of a mining plan before applying the unsuitability criteria. This shall not preclude assessment of lands in an existing lease as part of the normal land use planning process.

(b) An unsuitability assessment of leased lands in the course of land use planning shall be conducted under the procedures in § 3461.3 of this title. An unsuitability assessment of leased lands during mining plan review shall, be conducted, to the extent practicable, consistent with the procedures in § 3461.3 of this title. In either case, in assessing leased lands, if any criterion applies, each exception to it shall be applied. If a criterion does apply and the conditions do not permit an exception, a further decision shall be made on whether the leased land is exempt from the criterion because of the source of the authority for the criterion. Mining may be permitted on land to which no criterion applies; on land where a criterion applies but where the conditions permit an exception; and on land to which a criterion applies, no exception applies, but which is exempt from that criterion.

(c) If a lease area or portion of a lease area is assessed to be unsuitable for all or certain stipulated methods of coal mining or the lease is found to be incompatible with the comprehensive land use plan or land use analysis, the Secretary may, except as provided in § 3461.5 of this title, negotiate with the lessee for exchange of coal lease bidding rights or other mineral leases or coal lease modifications as described in subpart 3435 of this title. If a lease area is assessed to be unsuitable because of impacts to alluvial valley floors, the Secretary may initiate negotiations with the lessee to exchange the lease for another Federal coal lease in an area acceptable for mining operations under subpart 3436 of this title.

§ 3461.5 Petitions to designate lands.

(a) Petitions to designate or terminate a designation of Federal lands as unsuitable for all or certain stipulated methods of surface coal mining shall be filed with and processed by the Surface Mining Officer under 30 CFR Part 769.

(b) After assessing unleased lands to be unsuitable in a comprehensive land use plan or land use analysis, the surface management agency may petition the Surface Mining Officer to designate the lands as unsuitable under 30 CFR Part 769.

(c) After assessing leased lands to be unsuitable under any criterion, its exceptions and exemptions, the surface management agency shall petition the Surface Mining Officer to designate the lands as unsuitable under 30 CFR Part 769.

(d) The completion of the unsuitability assessment by the surface management agency and filing of the petition under paragraph (b) or (c) of this section shall be deemed completion of the procedures in 30 CFR Part 769.14(c), (e)(1) and (g), and shall be deemed a recommendation for approval under 30 CFR 769.14(e)(2).

§ 3461.6 Exploration.

(a) Assessment of any area as unsuitable for all or certain stipulated methods of coal mining pursuant to section 522 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272) and the regulations of this subpart does not prohibit exploration of such area under subpart 3410 of this title.

(b) An application for an exploration license on any lands assessed as unsuitable for all or certain stipulated methods of coal mining shall be reviewed by the Bureau of Land Management to ensure that exploration does not harm any value for which the area has been assessed as unsuitable.

Subpart 3465—Surface Management and Protection

§ 3465.0-1 Purpose.

This subpart establishes rules for the management and protection of the surface of leased Federal lands when coal deposits are developed.

§ 3465.0-2 Objective.

This subpart is designed to ensure the use of effective and reasonable coal mining methods, and the reclamation of mined lands in a manner that will minimize any adverse social, economic, and environmental effects of coal mining.

§ 3465.0-3 Authority.

These regulations are issued under the authority of the statutes listed in § 3400.0-3 of this title.

§ 3465.0-7 Applicability.

This subpart applies to leases and licenses to mine, issued by the Bureau of Land Management for the development of Federal coal.

§ 3465.1 Use of surface.

(a) The operator shall use only that part of the surface area included in his lease or license to mine that has been included in an approved permit (30 CFR Part 741).

(b) Separate leases, permits, or rights-of-way under the appropriate provisions in Title 43 of the Code of Federal Regulations are required for the installation of power generation plants or commercial or industrial facilities on

the lands in the lease or license to mine or for the use of mineral materials or timber from the land in the lease or license to mine.

(c) Other land uses under other authorities may be allowed on an area in a lease or license to mine provided there is no unreasonable conflict and that neither the mining operation nor the other use is jeopardized by the presence of the other.

§ 3465.2 Obligations and standards of performance.

(a) A lessee or a holder of a license to mine shall comply with the regulations in this subpart and with the terms and conditions of the lease or license to mine.

(b) A lessee or a holder of a license to mine shall comply with the applicable performance standards in 30 CFR Chapter VII, Subchapter D, and 30 CFR 211.

(c) When changed conditions or newly discovered information indicate that an approved permit (30 CFR Part 741) needs to be reviewed or supplemented, the authorized officer shall recommend any appropriate revision or supplement to the Surface Mining Officer.

(d) The authorized officer may, in the issuance of any lease or license to mine, develop and include additional specific stipulations in the lease or license to mine involving special management consideration.

§ 3465.3 Inspections and noncompliance.

§ 3465.3-1 Inspections.

The authorized officer, Mining Supervisor, or inspectors from the Surface Mining Officer shall have the right to enter lands under a lease or license to mine to inspect without advance notice or a search warrant, upon presentation of appropriate credentials, to determine whether the activities and conditions are in compliance with the applicable laws, regulations, notices and orders, terms and conditions of leases, licenses to mine or permits, and the requirements of the approved mining plan.

§ 3465.3-2 Discovery of noncompliance.

(a) Upon discovery of activities or conditions that are not in compliance with the terms of a lease or license to mine, or with an approved permit (30 CFR 741), but that do not pose a serious and imminent danger to the public or to resources and environmental quality, the authorized officer shall refer the matter to the Surface Mining Officer for remedial action, or to the Mining Supervisor on matters of exploration outside the permit area.

(b) Upon discovery of activities or conditions that are not in compliance with the terms of a lease, license to mine, or with an approved permit and that do pose a serious and imminent danger to the health and safety of the public or to resources and environmental quality, the authorized officer may order the immediate cessation of the activities or conditions provided that the Surface Mining Officer is immediately informed of the issuance of any such emergency cessation order.

§ 3465.3-3 Failure of lessee or holder of license to mine to act.

Failure of a lessee or the holder of a license to mine to comply with an immediate cessation order issued under § 3465.3-2(b) or with a written notice of noncompliance issued by the Surface Mining Officer in accordance with 30 CFR Part 211 or 30 CFR Chapter VII, Subchapter D, shall be grounds for suspension of the permit and may be grounds for cancellation of the license to mine, or in accordance with subpart 3452 of this title, the lease.

§ 3465.4 Alternative postmining land use.

(a) When a permit applicant, who holds a lease or a license to mine, proposes any postmining land use that is substantially different from the land use prior to exploration and mining, the Surface Mining Officer, with the approval of the authorized officer of the appropriate surface management agency, may review and approve or disapprove any postmining land use in accordance with the criteria established in 30 CFR 816.133.

(b) If the Surface Mining Officer determines that a decision to approve any alternative postmining land use or alternative rehabilitation practices would constitute a major Federal action requiring an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) and that the decision has not been discussed in any environmental impact statement that may have been prepared for the issuance of the lease or the approval of the permit, a statement shall be prepared by the Surface Mining Officer.

§ 3465.5 Bonding.

(a) A lease bond for compliance with the terms of a lease or license to mine shall be furnished in accordance with the applicable provisions of subpart 3474 of this title.

(b) The provisions governing reclamation performance bonds are found in 30 CFR Part 742.

(c) A lease or license to mine may be denied any applicant or successful bidder who has previously forfeited a bond because of failure to comply with a permit unless the affected lands covered by that plan or permit have been reclaimed without cost to the Federal Government. Nothing in this section shall modify or limit the discretionary authority of the authorized officer to deny for other causes any bid or application for a lease or license to mine.

§ 3465.6 Conduct, completion, and abandonment of operations.

All terms of the permit shall be administered under 30 CFR Chapter VII, Subchapter D, and 30 CFR 211.

PART 3470—COAL MANAGEMENT PROVISIONS AND LIMITATIONS

Subpart 3471—Coal Management Provisions and Limitations

Sec.
3471.1 Land description requirements.
3471.1-1 Land description in application.
3471.1-2 Land description in lease.
3471.2 Effect of land transactions.
3471.2-1 Disposal of land with a reservation of minerals.
3471.2-2 Effect of conveyance to state or local entity.
3471.3 Cancellation or forfeiture.
3471.3-1 Cancellation or forfeiture for cause.
3471.3-2 Protection of bona fide purchaser.
3471.3-3 Sale of underlying interests.
3471.4 Future interest, acquired lands.

Subpart 3472—Lease Qualification Requirements

3472.1 Qualified applicants and bidders.
3472.1-1 Special leasing qualifications.
3472.1-2 Acreage limitations.
3472.2 Filing of qualification statements.
3472.2-1 Sole party in interest statement.
3472.2-2 Contents of qualification statement.
3472.2-3 Signature of applicant.
3472.2-4 Special qualifications, heirs, and devisees (estates).
3472.2-5 Special qualifications, public bodies.

Subpart 3473—Fees, Rentals, and Royalties

3473.1 Payments.
3473.1-1 Form of payment.
3473.1-2 Where paid.
3473.1-3 When paid.
3473.2 Fees.
3473.2-1 General fee provisions.
3473.2-2 Exemptions from fee provisions.
3473.3 Rentals and royalties.
3473.3-1 Rentals.
3473.3-2 Royalties.
3473.4 Suspension of operation, production, and payment obligations.

Subpart 3474—Bonds

3474.1 Bonding requirements
3474.2 Type of bond required.

3474.3 Bond conversions.
3474.4 Qualified sureties.
3474.5 Default.
3474.6 Termination of the period of liability.

Subpart 3475—Lease Terms

3475.1 Duration of leases.
3475.2 Dating of leases.
3475.3 Land description.
3475.4 Diligent development and continued operation.
3475.5 Logical mining unit.

Authority: 30 U.S.C. 181 et seq. and 30 U.S.C. 351–359

Subpart 3471—Coal Management Provisions and Limitations

§ 3471.1 Land description requirements.

§ 3471.1-1 Land description and coal deposit in application.

(a) Any application for a lease, lease modification, or license to mine shall include a complete and accurate description of the lands for which the lease, lease modification, or license to mine is desired.

(b) If the land has been surveyed under the public land rectangular survey system, each application shall describe the land by legal subdivision (section, township, and range), or aliquot part thereof (but not less than 10 acres).

(c) Where protraction diagrams have been approved and the effective date has been published in the **Federal Register**, the application for land shown on such protraction diagrams and filed on or after the effective date shall contain a description of the land according to the section, township, and range shown on the approved protraction diagrams.

(d)(1) If the land has not been surveyed on the ground and is not shown on the records as covered by protraction diagrams, the application shall describe the land by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the land are in irregular form, and connected by courses and distances to an official corner of the public land surveys. In Alaska, the description of unsurveyed land shall be connected by courses and distances to either an official corner of the public land surveys or to a triangulation station established by an agency of the United States such as the Geological Survey, the National Oceanic and Atmospheric Administration, or the International Boundary Commission, if the record position is available to the general public.

(2)(i) If the land is acquired land in a non-public land state which has not been surveyed under the rectangular system of public land surveys, the land shall be described as in the deed or other document by which the United States acquired title to the lands or minerals.

(ii) If the land constitutes less than the entire tract acquired by the United States, it shall be described by courses and distances between successive angle points on its boundary tying by course and distance into an identifiable point listed in the description in the deed or other document by which the United States acquired title to the land.

(iii) If the description in the deed or other document by which the United States acquired title to the land does not include the courses and distance between the successive angle points on the boundary of the desired tract, the description in the application shall be expanded to include such courses and distances.

(iv) The application shall be accompanied by a map on which the land is clearly marked showing its location with respect to the administrative unit or project of which it is a part. It is not necessary to submit a map if the land has been surveyed under the rectangular system of public land surveys, and the land description can be conformed to that system.

(v) If an acquisition tract number has been assigned by the acquiring agency to the tract, a description by tract number will be accepted.

(vi) Any accreted land not described in the deed to the United States shall be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the acquired tract to which the accretions belong.

§ 3471.1-2 Land description in lease.

(a) All unsurveyed lands in a public land survey system state shall have a cadastral survey performed at Federal Government expense before a lease or license to mine may be issued, except for areas covered by a skeleton survey, i.e. Utah and Alaska, and the lease when issued shall be described by legal subdivision (section, township, and range), or aliquot part thereof (but no less than 10 acres).

(b) If the land is acquired land in a non-public land state, the land in the lease shall be described in the same manner provided for lease applications under § 3471.1-1(d)(2) of this title.

§ 3471.2 Effect of land transactions.

§ 3471.2-1 Disposal of land with a reservation of minerals.

(a) Where the lands included in a lease or license to mine have been or may be disposed of with reservation of the coal deposits, a lessee or the holder of a license to mine must comply fully with the law under which the reservation was made. See, among other laws, the Acts of March 3, 1909 (34 Stat. 844; 30 U.S.C. 81); June 22, 1910 (35 Stat. 583; 30 U.S.C. 83–85); December 29, 1916, as amended (39 Stat. 862; 43 U.S.C. 291–301); June 17, 1949 (63 Stat. 200); June 21, 1949 (63 Stat. 214; 30 U.S.C. 54); March 8, 1922 (42 Stat. 415; 48 U.S.C. 376–377); and October 21, 1976 (90 Stat. 2759; 43 U.S.C. 1719).

(b) Any sale or conveyance of lands subject to the Mineral Leasing Act for Acquired Lands by the agency having jurisdiction shall be subject to any lease or license to mine previously issued under that act.

(c) Leases on acquired lands outstanding on August 7, 1947, and covering lands subject to the Mineral Leasing Act for Acquired Lands may be exchanged for new leases to be issued under that act subject in each case to such appropriate conditions as may be prescribed.

(d) When: (1) the coal is to be mined by other than underground mining techniques, (2) the surface of the land is owned by a qualified surface owner, and (3) the lease is issued after August 3, 1977, the lessee shall comply with the terms of the written consent of the qualified surface owner not inconsistent with Federal and state mined land reclamation laws and regulations (43 CFR 3420.6).

§ 3471.2-2 Effect of conveyance to State or local entity.

(a) If the United States has conveyed the title to, or otherwise transferred control of the land surface containing the coal deposits to (1) any state or political subdivision, agency, or its instrumentality, (2) a college, any other educational corporation, or association, or (3) to a charitable or religious corporation or association, the transferee shall be notified by certified mail of the application for the license to mine or lease, or the scheduling of a lease sale. The transferee shall be given a reasonable period of time within which to suggest any stipulations necessary for the protection of existing surface improvements or uses to be included in the license or lease and state the supporting facts, or to file any

objections to its issuance and state the supporting facts.

(b) If the state, or local entity opposes the issuance of the license to mine or lease, the facts submitted in support of the opposition must be carefully considered and each case separately decided on its merits. Opposition by the state or local entity is not a bar to issuance of the license to mine or lease for the reserved minerals in the lands. (See, however, § 3461.1(b).) In each case, the final determination on whether to issue the license to mine or lease is based on the best interests of the public.

§ 3471.3 Cancellation or forfeiture.

§ 3471.3-1 Cancellation or forfeiture for cause.

Any lease or license to mine may be cancelled or forfeited for violation of the act under which the lease or license to mine was issued, applicable Federal regulations, or the terms and conditions of the lease or license to mine (43 CFR 3452.2).

§ 3471.3-2 Protection of bona fide purchaser.

(a) The Secretary's right to cancel or forfeit a lease for any violation shall not adversely affect the title or interest of a bona fide purchaser of any lease or any interest therein. A bona fide purchaser must be a person, association, or corporation qualified to hold such lease or interest, even though the holdings of the party or parties from which the lease or interest therein was acquired or their predecessor(s) in title (including the original lessee of the United States), may have been cancelled or forfeited for any such violation.

(b) Any party to any proceedings with respect to a violation of any provision of the mineral leasing laws has the right to be dismissed promptly as a party by showing that he or she holds and acquired his or her interest as a bona fide purchaser without having violated any provisions of the mineral leasing laws. No hearing shall be necessary on such showing unless prima facie evidence is presented to indicate a possible violation on the part of the alleged bona fide purchaser.

(c) If, during any such proceeding, a party waives his or her rights under the lease, or if such rights are suspended by order of the Secretary pending a decision, rental payments and time counted against the term of the lease shall be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver or suspension.

§ 3471.3-3 Sale of underlying interests.

If, in any proceeding to cancel or forfeit a lease or any interest therein acquired in violation of any of the provisions of the mineral leasing laws, the lease or interest therein is cancelled or forfeited, and if there are valid options to acquire the lease or an interest therein that are not subject to cancellation, forfeiture, or compulsory disposition, this lease or interest therein shall be sold to the highest responsible qualified bidder by competitive bidding, in a manner similar to that provided for in the offering of leases by competitive bidding, subject to all outstanding valid interests and options. If less than the whole interest in the lease or interest therein is cancelled or forfeited, the partial interest shall be sold in the same way. If no satisfactory offer is obtained as a result of the competitive offering of a whole or partial interest, it may be sold by other methods that the authorized officer finds appropriate. However, the terms shall not be less favorable to the Government than those of the best competitive bid received.

§ 3471.4 Future interest, acquired lands.

An application to lease lands in which the United States has a future interest filed more than 2 years prior to the date of the vesting in the United States of the interest in the coal shall be rejected. Any application for a future interest lease outstanding at the time of the vesting in the United States of the present possessory interest in the coal shall not lapse, but shall continue to be treated under subpart 3425 of this title. (See 43 CFR 3472.1-1(g).)

Subpart 3472—Lease Qualification Requirements

§ 3472.1 Qualified applicants and bidders.

A lease may be issued only to (a) citizens of the United States; (b) associations of citizens organized under the laws of the United States or of any state thereof, which are authorized to hold such interests by the statute under which they are organized and by the instrument establishing their association; (c) corporations organized under the laws of the United States or of any state thereof, including a company or corporation operating a common carrier railroad; and (d) public bodies, including municipalities.

§ 3472.1-1 Special leasing qualifications.

(a) Each applicant or bidder for a lease shall furnish a signed statement showing that, with the area applied or bid for, the applicant or bidder's interests in leases and lease applications, held directly or indirectly, do not exceed in the aggregate the acreage limitation in § 3472.1-2 of this title.

(b) A lease shall not be issued to a minor but may be issued to a legal guardian or trustee on behalf of a minor.

(c) Every company or corporation operating a common carrier railroad shall make a statement that it needs the coal for which it seeks a lease solely for its own railroad use; that it operates main or branch lines in the state in which the lands involved are located; that the aggregate acreage in the leases and applications in which it holds an interest, directly or indirectly, does not exceed 10,240 acres; and that it does not hold more than one lease for each 200 miles of its railroad lines served or to be served from such coal deposits. This last requirement excludes spurs or switches, branch lines built to connect the leased coal with the railroad, and parts of the railroad operated mainly by power not produced by steam.

(d) Aliens may not acquire or hold any direct or indirect interest in leases, except that they may own or control stock in corporations holding leases if the laws of their country do not deny similar or like privileges to citizens of the United States. If any appreciable percentage of stock of a corporation is held by aliens who are citizens of a country denying similar or like privileges to United States citizens, that corporation's application or bid for a lease shall be rejected, and that corporation's lease shall be subject to cancellation.

(e) After August 4, 1986, no lease shall be issued to any applicant or bidder that holds and has held for 10 years any lease from which coal is not being produced, except as authorized under § 3475.4 of this title, in commercial quantities as defined in § 3400.0-5(i)(1) of this title.

(f) In order to qualify for a lease on acquired lands set apart for military and naval purposes, a governmental entity shall show that it produces electrical energy for sale to the public and that it is located in the state where the lands subject to the application or bid are located.

(g) Any applicant for a lease for lands in which the United States has a future interest shall submit documentation that he or she holds, in fee or by lease, the present interest in the coal deposit subject to the application.

§ 3472.1-2 Acreage limitations.

(a)(1) No person, association, or corporation, or any subsidiary, affiliate, or person controlled by or under common control with such person, association, or corporation shall take, hold, own, or control at one time Federal coal leases, lease or lease modification applications, or bids on more than 46,080 acres in any one state and in no case on more than 100,000 acres in the United States.

(2) No person, association, or corporation holding, owning, or controlling leases, lease or lease modification applications or bids (individually or through any subsidiary, affiliate, or person under common control) on more than 100,000 acres in the United States on August 4, 1976, shall be required to relinquish any lease or lease application held on that date. However, it shall not be permitted to hold any additional interests in any further leases or lease applications until such time as its holdings, ownership, or control of leases or applications has been reduced below 100,000 acres within the United States.

(b)(1) In computing acreage held, owned, or controlled, the accountable acreage of a party owning an undivided interest in a lease shall be the party's proportionate part of the total lease acreage. The accountable acreage of a party owning an interest in a corporation or association shall be the party's proportionate part of the corporation's or association's accountable acreage. However, no person shall be charged that person's pro rata share of any acreage holdings of any association or corporation unless that person is the beneficial owner of more than 10 percent of the stock or other instruments of ownership or control of such association or corporation.

(2) On acquired lands, if the United States owns only a fractional interest in the coal resources of the lands involved, only that part of the total acreage involved in the lease, proportionate to the extent of ownership by the United States of the coal resources, shall be charged as acreage holdings. The acreage embraced in a future interest lease is not to be charged as acreage holdings until the lease for the future interest takes effect.

§ 3472.2 Filing of qualification statements.

§ 3472.2-1 Sole party in interest statement.

Every applicant or bidder for a lease or license to mine shall submit to the Bureau of Land Management State Office having jurisdiction over the lands in the application or subject to the bid (43 CFR Subpart 1821) at the time of filing the application or bid a signed statement that the applicant is the sole party in interest in the application or bid, and the lease or license to mine, if issued. If the applicant or bidder is or will not be the sole party in interest, the applicant or bidder shall set forth the names of the other interested parties in the application or bid. A separate or joint statement shall be signed by them and by the applicant or bidder setting forth the nature and extent of the interest of each in the application or bid, the nature of the agreement between them, if oral, and a copy of such agreement if written. Such separate or joint statement of interest and written agreement, if any, or a statement of the nature of such agreement, if oral, shall accompany the application or bid. All interested parties shall furnish evidence of their qualifications to hold such interest in the lease or license to mine including a statement regarding knowledge of written consent from any qualified surface owner for the area involved (43 CFR Part 3427).

§ 3472.2-2 Contents of qualification statement.

(a) If the applicant or bidder is an individual, he shall submit a signed statement setting forth his citizenship with each application or bid for a license to mine or lease.

(b) If the applicant or bidder is an association or partnership, the application or bid shall be accompanied by a certified copy of the articles of association or partnership, together with a statement showing (1) that the association or partnership is authorized to hold a lease or license to mine; (2) that the member or partner executing the lease or license to mine is authorized to act on behalf of the association or partnership in such matters; (3) the names and addresses of all members owning or controlling more than 10 percent of the association or partnership and their citizenship and holdings.

(c) If the applicant or bidder for a lease or license to mine is a corporation, it must submit statements showing (1) the state of incorporation; (2) that the corporation is authorized to hold leases or licenses to mine; (3) the names of the officers authorized to act on behalf of the corporation; (4) the percentage of the corporation voting stock and all of the stock owned by aliens or those having addresses outside of the United States; and (5) the name, address, citizenship, and acreage holdings of any stockholder owning or controlling 10 percent or more of the corporate stock of any class. If more than 10 percent of the stock is owned or controlled by or on behalf of aliens, or persons who have addresses outside of the United States, the corporation shall provide their names and addresses, the amount and class of stock held by each such person, and to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each such person. Any applicant who has previously filed a qualification statement may submit either a serial number reference to the record and office where the statement is filed or a new qualification statement. Applications on behalf of a corporation executed by other than an officer named under subsection (c)(1) of this section shall be accompanied by proof of the signatory's authority to execute the instrument except in a case where an officer of a corporation signs an application on behalf of the corporation.

(d) To qualify as a small business for the purpose of bidding on any tract to be offered as part of a special opportunity lease sale for small businesses, the bidder shall submit evidence demonstrating qualification under 13 CFR 121.

(e) Where there is a legal guardian or trustee, the following shall be provided:

(1) A copy of the court order or other document authorizing the guardian or trustee to act as such and to fulfill in behalf of the ward or beneficiary all obligations of the lease or other obligations arising thereunder; the person submitting any such document shall in some manner indicate its authenticity;

(2) A statement by the guardian or trustee as to his or her citizenship and holdings (of acreage in Federal coal leases) in any capacity; i.e., individually and for the benefit of any person; and

(3) A statement by each ward and beneficiary as to his or her citizenship and holdings; if the ward or beneficiary is a minor, the statement shall be executed for the minor by the guardian or trustee, as appropriate.

§ 3472.2-3 Signature of applicant.

(a) Every application or bid for a lease or license to mine shall be signed by the applicant or bidder or by its attorney-in-fact. If executed by an attorney-in-fact the application or bid shall be accompanied by the power of attorney and the applicant's own statement as to citizenship and acreage holdings unless the power of attorney specifically authorizes and empowers the attorney-in-fact to make such statement or to

execute all statements which may be required under these regulations.

(b) If the application or bid is signed by an attorney-in-fact or agent, it shall be accompanied by:

(i) a statement over the signature of the attorney-in-fact or agent; and

(ii) a separate statement personally signed by the applicant or bidder stating whether there is any agreement or undertaking, written or oral, whereby the attorney-in-fact or agent has or is to receive any interest in the lease, if issued.

§ 3472.2 Special qualifications, heirs, and devisees (estates).

(a) If an applicant or bidder for a license to mine or a lease dies before the license to mine or lease is issued, the license or lease shall be issued: if the estate has not been probated, to the executor or administrator of the estate; if probate has been completed, or is not required, to the heirs or devisees; and if their are minor heirs or devisees, to their legal guardian or trustee.

(b) The lease or license to mine shall not issue until the following information has been filed:

(1) Where probate of the estate has not been completed:

(i) evidence that the person who acts as executor or administrator has the authority to act in that capacity and to act on the application or bid;

(ii) evidence that the heirs or devisees are the heirs or devisees of the deceased applicant or bidder, and are the only heirs or devisees of the deceased; and

(iii) a statement over the signature of each heir or devisee concerning citizenship and holdings.

(2) Where the executor or administrator has been discharged or no probate proceedings are required: (i) a certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the applicant or bidder, and citing the provisions of the law of the deceased's last domicile showing that no probate is required; and (ii) a statement over the signature of each of the heirs or devisees with reference to citizenship and holdings, except that if the heir or devisee is a minor, the statement shall be over the signature of the guardian or trustee.

§ 3472.2-5 Special qualifications, public bodies.

(a) To qualify to bid for a lease on a tract offered for sale under § 3420.1–4 of this title, a public body shall submit:

(1) Evidence of the manner in which it is organized;

(2) Evidence that it is authorized to hold a lease;

(3) A definite plan as described in § 3420.1–4(b) to produce energy within 10 years of issuance of the prospective lease solely for its own use or for sale to its members or customers (except for short-term sales to others); and

(4) Evidence that the definite plan has been duly authorized by its governing body.

(b) To obtain a license to mine, a municipality shall submit with its application:

(1) Evidence of the manner in which it is organized;

(2) Evidence that it is authorized to hold a license to mine; and

(3) Evidence that the action proposed has been duly authorized by its governing body.

(c) To qualify to bid for a lease on a tract of acquired land set apart for military or naval purposes, a governmental entity shall submit:

(1) Evidence of the manner in which it is organized, including the State in which it is located;

(2) Evidence that it is authorized to hold a lease;

(3) Evidence that the action proposed has been duly authorized by its own governing body; and

(4) Evidence that it is producing electricity for sale to the public in the state where the lands to be leased are located.

(d) If the material required in paragraphs (a), (b), or (c) of this section has previously been filed, a reference to the serial number of the record in which it has been filed, together with a statement as to any amendments, shall be accepted.

Subpart 3473—Fees, Rentals, and Royalties

§ 3473.1 Payments.

§ 3473.1-1 Form of payment.

Payments shall be made in cash, or by money order, personal check, certified check, bank draft, or bank cashier's check payable to the Bureau of Land Management or Geological Survey, as appropriate.

§ 3473.1-2 Where paid.

(a) Payments for all licenses to mine shall be paid to the Bureau of Land Management State Office having jurisdiction over the land (43 CFR Subpart 1821).

(b) Payments of all rentals for non-producing leases shall be paid to the Bureau of Land Management State Office having jurisdiction over the land (43 CFR Subpart 1821).

(c) Rentals and royalties on producing leases shall be paid to the Mining Supervisor for the area in which the lands under lease are situated.

§ 3473.1-3 When paid.

First year's rental for preference right leases shall be remitted at the time of filing the applications. First year's rental for competitive leases shall be payable when required by decision. Thereafter, rental for all leases shall be paid in accordance with the lease provisions.

§ 3473.2 Fees.

§ 3473.2-1 General fee provisions.

(a)(1) A filing fee of $250.00 shall accompany each application for a lease, exploration license or lease modification.

(2) Each original application or any renewal application for a license to mine shall be accompanied by a $10.00 filing fee.

(3) A filing fee of $50.00 shall accompany each application for approval of any transfer of a lease or an interest therein.

(b) The fee shall be retained as a service charge even if the application is rejected or withdrawn in whole or in part. An application not accompanied by the filing fee will not be accepted for filing; it will be returned to the applicant without action.

§ 3473.2-2 Exemptions from fee provisions.

No filing fee is required for:

(a) An application for a license to mine filed by a relief agency as described in subpart 3440 of this title; or

(b) Preference right lease applications.

§ 3473.3 Rentals and royalties.

§ 3473.3-1 Rentals.

(a) The annual rental per acre or fraction thereof on any lease issued or readjusted after the promulgation of this subpart shall not be less than $3. The amount of the rental will be specified in the lease.

(b) Until a lease issued before August 4, 1976, is readjusted, the rental paid for any year shall be credited against the production or advance royalties for that year.

(c) On leases issued or readjusted after August 4, 1976, rental payments shall not be credited against royalties.

§ 3473.3-2 Royalties.

(a)(1) Royalty rates shall be determined on an individual case basis prior to lease issuance. For competitive leases, initial royalty rates shall be set out in the notice of lease sale.

(2) A lease shall require payment of a royalty of not less than 12½ percent of the value of the coal removed from a surface mine.

(3) A lease shall require payment of royalty of not less than 8 percent of the value of the coal removed from an underground mine, except that the authorized officer may determine a lesser amount, but in no case less than 5 percent if conditions warrant.

(4) The value of coal removed from a mine is defined for royalty purposes in 30 CFR 211.63.

(b)(1) The Mining Supervisor shall have the discretion, upon the request of the lessee, to authorize the payment of an advance royalty in lieu of continued operation for any particular year.

(2) The advance royalty for each lease shall be based on a percentage of the value of a minimum number of tons of coal, and the percentage shall not be less than the percentage prescribed in that lease for the production royalty. For any lease issued after August 4, 1976, the minimum number of tons shall be determined on a schedule sufficient to exhaust the leased reserves in 40 years from the approval date of the mining plan for the LMU of which the lease is a part; for any lease issued before August 4, 1976, the minimum number of tons shall be determined on a schedule sufficient to exhaust the leased reserves in 40 years from June 1, 1976.

(3) The use of advance royalties in lieu of continued operation shall not be permitted for more than a total of 10 years during the life of any lease, including the life of the lease after readjustment. The amount of any advance royalties paid on a lease issued or readjusted after August 4, 1976, shall be credited against production royalties, except that no payment of an advance royalty during the first 20 years of a lease issued after August 4, 1976, may be used as credit against production royalty due after the 20th year of that lease.

(4) The Mining Supervisor may, upon notifying the lessee six months in advance, cease to accept advance royalties in lieu of the requirement of continued operation.

(c) An overriding royalty interest or production payment shall not be created by a lease transfer, surface owner consent, or otherwise (1) that exceeds 50 percent of the rate of royalty first payable to the United States under the lease or (2) that, when added to any other overriding royalty interest, exceeds that percentage. Where an interest in the leasehold or operating agreement is transferred, the transferor may retain an overriding royalty in excess of the above limitation if he shows to the satisfaction of the Bureau of Land Management that he has made substantial investments for improvements on the land covered by the transfer that would justify a higher payment.

(d)(1) In order to encourage the greatest ultimate recovery of coal, and in the interest of conservation, the Secretary, whenever he determines it necessary to promote development or finds that the lease cannot be successfully operated under its terms may waive, suspend, or reduce the rental, or reduce the royalty but not advance royalty, on an entire leasehold, or on any deposit, tract, or portion thereof, except that in no case shall the royalty be reduced below 5 percent for underground coal.

(2) An application for any of the above benefits shall be filed in triplicate in the office of the Mining Supervisor. The application shall contain the serial number of the lease, the Bureau of Land Management State Office, the name of the record title holder and any operator or sublessee, and the description of the lands in the manner provided by § 3471.1 of this title.

(i) Each application shall include the number and location of the mine, a map showing the extent of the mining operations, a tabulated statement of the coal mined and subject to royalty for each month covering a period of not less than 12 months immediately prior to the date of filing of the application, and the average production per day mined for each month, with complete information as to why the minimum production or continued operation requirement was not met.

(ii) Each application shall contain a detailed statement of expenses and costs of operating the entire lease, the income from the sale of coal, and all facts indicating whether the mines can be successfully operated upon the royalty or rental fixed in the lease. Where the application is for a reduction in royalty, full information shall be furnished as to whether royalties or payments out of production are paid to parties other than the United States, the amounts so paid, and efforts made to reduce them, if any.

(iii) The applicant shall also file a copy of agreements between the lessee and the holders of any royalty interests to a permanent reduction of all other royalties from the leasehold so that the total royalties owed the holders of royalty interests will not be in excess of one-half of the Government royalties, should the royalty reduction be granted.

§ 3473.4 Suspension of operations, production, and payment obligations.

(a) Application by a lessee for relief from any operating and producing requirements of a lease shall be filed in triplicate in the office of the Mining Supervisor. The Mining Supervisor is authorized to act on applications for suspension of operations or production, or both, filed pursuant to this section and to terminate suspensions of this kind which have been or may be granted.

(b) The term of any lease shall be extended by adding thereto any period of suspension of all operations and production during such term in accordance with any direction or assent of the Mining Supervisor.

(c) A suspension shall take effect as of the time specified in the direction or assent of the Mining Supervisor. Rental and minimum royalty payments will be suspended during such period of suspension of all operations and production, beginning with the first day of the lease month on which the suspension of operations and production becomes effective. If the suspension of operations and production becomes effective on any date other than the first day of the lease month, rental and minimum royalty payments shall be suspended beginning with the first day of the lease month following such effective date. The suspension of rental and minimum royalty payments shall end on the first day of the lease month in which operations or production is resumed. Where rentals are creditable against royalties and have been paid in advance, proper credit shall be allowed on the next rental or royalty due under the lease.

(d) The minimum annual production requirements of a lease shall be proportionately reduced for that portion of a lease year for which suspension of operations and production is directed or granted by the Secretary in the interest of conservation.

(e) A suspension under this section affects only the operating and producing requirements of the lease, it does not suspend the permit and the lessee's reclamation obligations under it.

Subpart 3474—Bonds

§ 3474.1 Bonding requirements.

(a) Before a lease may be issued, one of the following forms of lease bond shall be furnished:

(1) Corporate surety bonds;

(2) Cash; or

(3) Personal lease bonds secured by negotiable U.S. bonds of a par value equal to the amount of the required

surety bond, together with a power of attorney executed on a form approved by the Director.

(b) The applicant or bidder shall file the lease bond in the proper office within 30 days of receiving notice. The lease bond shall be furnished on a form approved by the Director.

(c) The bonding obligation for a new lease may be met by an adjustment to an existing bond covering another lease within the same logical mining unit.

§ 3474.2 Type of bond required.

(a) A lease bond for each lease, conditioned upon compliance with all terms and conditions of the lease except reclamation, shall be furnished in the amount determined by the authorized officer. The amount of the bond may be changed if the authorized officer considers such a change to be proper and necessary.

(b) For exploration licenses, a bond must be furnished in accordance with § 3410.3–7 of this title.

§ 3474.3 Bond conversions.

(a) The authorized officer shall notify those leaseholders who have nationwide or statewide bonds at the time of issuance of this subpart of the requirement to secure a separate lease bond for each lease in the amount determined by the authorized officer to be proper and necessary.

(b) The authorized officer may release that amount of any outstanding lease bond which relates to the performance of mining and reclamation plan permit obligations.

(c) Upon approval of a logical unit mining including more than one Federal lease, the lease bonds shall be consolidated into a single bond for the leases in the LMU.

§ 3474.4 Qualified sureties.

A list of companies holding certificates of authority from the Secretary of the Treasury under the Act of July 30, 1947 (6 U.S.C. 6–14) as acceptable sureties on Federal bonds is published annually in the **Federal Register.**

§ 3474.5 Default.

When the surety makes payment to the Government of any indebtedness due under a lease, the face amount of the surety bond and the surety's liability thereunder shall be reduced by the amount of such payment.

§ 3474.6 Termination of the period of liability.

The authorized officer shall not consent to termination of the period of liability under the lease bond unless an acceptable substitute bond has been filed or until all terms and conditions of the lease have been fulfilled.

Subpart 3475—Lease Terms

§ 3475.1 Duration of leases.

Leases shall be issued for a period of 20 years and so long thereafter as the condition of continued operation is met. If the condition of continued operation is not met the lease shall be cancelled as provided in § 3452.2 of this title.

§ 3475.2 Dating of leases.

(a) Leases will be dated and made effective the first day of the month following the date signed by the authorized officer. However, upon receipt of a prior written request, the authorized officer may date a lease to be effective on the first day of the month in which it is signed.

(b) Future interest leases shall become effective on the date of vesting of title to the minerals in the United States as stated in the lease.

§ 3475.3 Land description.

Compliance with § 3471.1 of this title is required.

§ 3475.4 Diligent development and continued operation.

(a) Each lease shall require (1) diligent development, and (2) either (i) continued operation except when operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee, or (ii) in lieu thereof, when the Secretary determines that the public interest will be served, payment of an advance royalty as described in § 3473.3–2(b) of this title.

(b) For coal leases issued before August 4, 1976, the 10 lease-year period for achieving diligent development may be increased as follows:

(1) Upon application by the lessee, the 10 lease-year period shall be extended by an amount of time equal to the period during which diligent development is, in the opinion of the Secretary, significantly impaired by (i) a strike, the elements, or casualties not attributable to the lessee, (ii) an administrative delay in the Department which is not caused by the lessee's action, and (iii) extraordinary circumstances not attributable to the lessee and not foreseeable by a reasonably prudent operator. In determining whether any of the conditions listed in subdivisions (i), (ii), or (iii) of this paragraph occurred and whether one or more of those conditions did, in fact, significantly impair diligent development, the Secretary's finding shall be final. The Secretary shall, however, not find to be an extraordinary circumstance under subdivision (iii) any condition arising out of normally foreseeable business risks such as: fluctuations in prices, sales, or costs, including foreseeable costs of compliance with requirements for environmental protection; commonly experienced delays in delivery of supplies or equipment; or inability to obtain sufficient sales.

(2) Upon application by the lessee, the Secretary may grant one extension, not exceeding five years, of the 10 lease-year period because of (i) time needed to complete development of advanced technology, e.g., in situ, gasification or liquefaction processes; (ii) the magnitude of the project (ordinarily magnitude means a mine in which the production in the first year after the end of the extended period for diligent development is expected to be at least two million tons if an underground mining operation or five million tons if a surface mining operation); or (iii) a contract which is a firm commitment for the sale or use of the first one-fortieth of the LMU reserves after the 10-year period. Regardless of the reason for granting an extension, the lessee shall produce the first one-fortieth of the LMU reserves before the end of the extended term.

(c) At the time when the Secretary grants an extension under paragraphs (a) and (b) of this section, the lessee shall be notified of the revised date by which coal shall be produced in commercial quantities.

§ 3475.5 Logical mining unit.

(a) Criteria for approving or directing establishment of an LMU containing more than a single Federal lease shall be established and applied by the Geological Survey. Each lease shall automatically be considered to constitute an LMU on the effective date of the lease or June 1, 1976, whichever is later. The lease LMU may, at a later date, be enlarged by the addition of other Federal leases or with interests in non-Federal coal deposits, or both. An LMU containing any interest other than a single Federal lease shall become effective only at the direction of the Mining Supervisor, or by designation during the normal tract delineation phase of the coal activity planning process, or upon its approval by the Mining Supervisor when requested by the lessee. The Mining Supervisor shall not direct or approve the establishment of such an LMU unless it is determined that the maximum economic recovery of all Federal coal deposits in the LMU will be achieved. The boundaries of an LMU may later be changed either upon

application by the lessee and with the approval of the Mining Supervisor after consultation with the authorized officer, or by direction of the Mining Supervisor after consultation with the authorized officer.

(b) When a lease is included in an LMU with other Federal leases or with interests in non-Federal coal deposits, the terms and conditions of the Federal lease or leases shall be amended so that they are consistent with the requirements imposed on the LMU of which it has become a part. In particular, diligent development, continued operation, and production in commercial quantities anywhere within the LMU, with respect to either Federal or non-Federal coal deposits, shall be considered to have occurred on each Federal lease in the LMU. The rental and royalty payments of all Federal leases in an LMU shall be combined, and advance royalties paid on any Federal lease in that LMU may, at the request of the lessee, be credited against those combined royalties.

(c) If, under the provisions of § 3452.1, the authorized officer accepts the relinquishment of any coal deposits in a lease, the LMU reserves shall be adjusted. When the Mining Supervisor is determining the LMU reserves, the lessee shall be consulted about any coal deposits subject to the lease which the lessee does not intend to mine. The lessee shall also be consulted about the rights the lessee is prepared to surrender to decrease the LMU reserves upon which the requirements of diligent development, continued operation, and production in commercial quantities will be based.

PART 3041. [Deleted]

PARTS 211 and 3460 [Amended]

2. 43 CFR Part 3041 is deleted in its entirety. These provisions are transferred to 30 CFR Chapter VII, 30 CFR Part 211, and 43 CFR Part 3460.

§ 3500.0-3 [Amended]

3. 43 CFR 3500.0-3 is amended by the deletion of paragraph (a)(1) and the renumbering of paragraphs "(a)(2)" through "(a)(6)" as "(a)(1)" through "(a)(5)", respectively.

§ 3500.0-5 [Amended]

4. 43 CFR 3500.0-5 is amended by the deletion of subsections (d) through (i).

§ 3500.1-1 [Amended]

5. 43 CFR 3500.1-1 is amended by the deletion of "coal;" wherever that word appears.

§ 3500.1-3 [Amended]

6. 43 CFR 3500.1-3(c)(1) and (f) are amended by the deletion of "coal,".

§ 3501.1-3 [Amended]

7. 43 CFR 3501.1-3, introductory text, is amended by the deletion of "; except for coal cases where noncontiguous tracts can be efficiently worked as a single mine or unit".

§ 3501.1-4 [Amended]

8. 43 CFR 3501.1-4 is amended by the deletion of paragraph (b)(1) and the renumbering of paragraphs "(b)(2)" through "(b)(6)" as "(b)(1)" through "(b)(5)", respectively.

§ 3501.1-5 [Amended]

§ 3501.2-1 [Amended]

9. 43 CFR 3501.1-5 and 3501.2-1 are amended by the deletion of "(a) *All leasable minerals except coal.* ", and by the deletion of paragraph (b) in its entirety. Subparagraphs (1)-(5) of 3501.1-5 are redesignated as new paragraphs (a)-(e) respectively, and subparagraphs (1)-(7) of 3501.2-1 are redesignated as new paragraphs (a)-(g) respectively.

§ 3501.2-3 [Amended]

10. 43 CFR 3501.2-3(a) is amended by the deletion of the word "coal".

§ 3501.3-2 [Amended]

11. 43 CFR 3501.3-2(b)(2) is amended by the deletion of subparagraph (i) and the renumbering of subparagraphs "(2)(ii)" through "(2)(v)" as "(2)(i)" through "(2)(iv)", respectively.

§ 3502.1-1 [Amended]

12. 43 CFR 3502.1-1 is amended by the deletion of subsection (c).

13. 43 CFR 3502.2 is amended by the revision of section 3502.2-2 to read as follows:

§ 3502.2 Individuals—Statement of citizenship.

If the applicant is an individual, he must submit with each application for permit or lease a statement over his own signature setting forth the applicant's citizenship.

§ 3502.9 [Deleted]

14. 43 CFR 3502.9 is deleted in its entirety.

§ 3503.2-2 [Amended]

15. 43 CFR 3503.2-2 is amended by the deletion of subsection (a) and the deletion of "(b)".

§ 3503.3-1 [Amended]

16. 43 CFR 3503.3-1(b) is amended by the deletion of paragraph (1) and the renumbering of paragraphs "(b)(2)" through "(b)(6)" as "(b)(1)" through "(b)(5)", respectively.

§ 3503.3-2 [Amended]

17. 43 CFR 3503.3-2(b) is amended by the deletion of paragraph (1) and the renumbering of paragraphs "(b)(2)" and "(b)(3)" as "(b)(1)" and "(b)(2)", respectively.

18. 43 CFR 3503.3-2(c)(3) is amended by the deletion of subparagraph (i) in its entirety and the redesignation of subparagraph (c)(3)(ii) as paragraph (c)(3) to begin:

(c) * * *

(3) *Exception—Phosphate.* * * *

19. 43 CFR 3503.3-2(d)(1), .3-2(d)(2), .3-2(d)(2)(i), and .3-2(e)(5) are amended by the deletion of "coal,".

§ 3503.3-3 [Deleted]

20. 43 CFR 3503.3-3 is deleted in its entirety.

§ 3504.2-1 [Amended]

21. 43 CFR 3504.2-1(b)(1) is amended by the deletion of "not less than $1,000 for coal leases;".

§ 3504.5-1 [Amended]

22. 43 CFR 3504.5-1, .6-1, and .7-1 are amended by the deletion of "coal,".

§§ 3507.0-1—3507.5 [Subpart 3507] [Deleted]

23. 43 CFR Subpart 3507 is deleted in its entirety. These provisions are transferred to 43 CFR Subpart 3410.

§ 3511.4-4 [Deleted]

24. 43 CFR 3511.4-4 is deleted in its entirety.

§ 3520.0-3 [Amended]

25. The second sentence of 43 CFR 3520.0-3(a) is amended by substituting "Group 3400" for "Subpart 3525".

§ 3520.1-1 [Amended]

26. 43 CFR 3520.1-1(a) is amended by the deletion of "*Coal,*" and the deletion of ", or for a prospecting permit issued for coal, if the permittee shows to the Secretary that he discovered commercial quantities of coal".

27. 43 CFR 3520.1-1(c) is amended by deleting the words "and *commercial quantities*" from the caption, and by deleting the words "commercial quantities of coal or" from the first sentence.

§ 3520.2-1 [Amended]

28. 43 CFR 3520.2-1 is amended by the deletion of paragraph (a)(3).

§ 3520.2-5 [Deleted]

29. 43 CFR 3520.2-5 and 3520.2-6 are deleted in their entirety.

§ 3521.1-1 [Amended]

30. The sixth sentence of 43 CFR 3521.1-1(b)(1) is amended to read as follows: "Data submittals shall include, at a minimum, average grade of the ore."

31. 43 CFR 3521.1-1(c)(4) is amended by the deletion of "as part of a logical mining unit".

32. 43 CFR 3521.1-1(e) is amended to read as follows:

(e) *Amount of detail required.* The information submitted by the permittee shall be sufficient to enable the authorized officer to ascertain whether the permittee's showing has a reasonable factual basis and supports his assertion that:

(1) He has found a valuable deposit of the minerals covered by the permit; and

(2) The land is chiefly valuable for the mineral deposit if the permit was issued for sodium, sulphur, or potassium.

33. 43 CFR 3521.1-1(h)(1) is amended to read as follows:

(1) That the permittee has presented information that has a reasonable factual basis, and that the information supports the permittee's assertion that:

(i) he has found a valuable deposit of the mineral covered by the permit; and

(ii) if the permit was issued for sodium, sulphur or potassium, that the land is chiefly valuable for the mineral deposit; and

34. 43 CFR 3521.1-1(i) is amended by the deletion of paragraph (1); by renumbering paragraph "(2)" as "(1)", and deleting from it "if the permit was issued for a mineral other than coal"; and by renumbering paragraph "(3)" as "(2)".

§ 3521.1-1 [Amended]

35. 43 CFR 3521.1-1(j)(3) is amended to read as follows:

(3) At the hearing the permittee shall have both the burden of going forward and the burden of proof, and must show by a preponderance of the evidence that he has discovered a valuable deposit of the minerals, and if his application is for a sodium, sulphur or potassium lease, that the land is chiefly valuable for the mineral deposit discovered.

§ 3521.2-1 [Amended]

36. 43 CFR 3521.2-1(a)(1)(i) is amended by the deletion of the sentence: "Competitive coal lease applications will be accepted only as authorized by 43 CFR Subpart 3525."

§ 3522.2-1 [Amended]

37. 43 CFR 3522.2-1 is amended by the deletion of "(a)" and the deletion of subsection (b) in its entirety.

§ 3523.2-1 [Amended]

38. 43 CFR 3523.2-1(b) is amended by deleting paragraph (1) in its entirety, by deleting the designation "(i)" in subparagraph (2), and by redesignating the remainder of subparagraph (2) as paragraph (b) to begin as follows:

(b) Exception—Solide (Hardrock) minerals—Default. Except as provided. * * *

§ 3524.2 [Deleted]

§ 3524.2-1 [Deleted]

39. 43 CFR 3524.2 and 3524.2-1 are deleted in their entirety.

§ 3524.3 [Redesignated]

§ 3524.3-1 [Redesignated]

40. 43 CFR 3524.3 and 3524.3-1 are renumbered as "3524.2" and "3524.2-1", respectively.

Subpart 3525 [Deleted]

41.43 CFR Subpart 3525 is deleted in its entirety.

§ 3526.0-1 [Amended]

42. 43 CFR 3526.0-1 is amended by the deletion of "or for the grant of a certificate of bidding rights as herein defined and usable in competitive coal lease sale, and/or the grant of modifications to an existing coal lease or coal leases adding contiguous coal lands or deposits,".

§ 3526.0-3 [Amended]

43. 43 CFR 3526.0-3(f) is deleted in its entirety.

§ 3526.0-5 [Deleted]

44. 43 CFR 3526.0-5 is deleted in its entirety.

45. A new section 43 CFR 3526.0-7 is added to read as follows:

§ 3526.0-7 Scope.

(a) 43 CFR Subpart 3435 contains the parallel provisions related to exchanges involving the issuance of coal leases, coal lease bidding rights or coal lease modifications. Regulations in both of these two subparts may be used in an inter-mineral exchange.

(b) In the case of any conflict between this subpart and the regulations in 43 CFR Subpart 3435, the provisions governing the lease or lease interests to be issued shall control.

§ 3526.1 [Amended]

46. 43 CFR 3526.1 (a) and (b) are amended by the deletion of ", coal bidding rights, or grants of coal lease modifications".

§ 3526.2 [Amended]

47. 43 CFR 3526.2(a)(3) is amended by the deletion of ", or grant of coal lease modifications."

48. 43 CFR 3526.2(b) is amended by the deletion of "or commercial quantities of coal".

49. 43 CFR 3526.2(c) is amended by the deletion of the designation "(1)", and by the deletion of subparagraphs (2) and (3) in their entirety.

50. 43 CFR 3526.2(d)(1) is amended by the deletion of the last sentence reading, "Coal lands or deposits may only be considered where suitable for addition to existing coal leases under the Secretary's authority to modify coal leases."

51. 43 CFR 3526.2(e) is amended by the deletion of the word *"coal"*.

52. 43 CFR 3526.2(f) is amended by the deletion of "or other terms regarding coal leases" and by the deletion of "or coal lease modification".

3526.3-1 [Amended]

53. 43 CFR 3526.3-1(a) is amended by the deletion of "or coal lease modifications" and the deletion of "or modified coal lease".

54. 43 CFR 3526.3-1(b)(3) is amended by the deletion of "or modified coal lease".

§ 3526.3-2 [Deleted]

55. 43 CFR 3526.3-2 is deleted in its entirety.

Subpart 3530 [Deleted]

56. 43 CFR Subpart 3530 is deleted in its entirety. Its provisions have been transferred to 43 CFR Subpart 3440.

§ 3550.1-1 [Amended]

57. The caption of 43 CFR 3550.1-1(a)(1) is amended to read, *"Leasable minerals other than oil and gas and coal."*

§ 3563.1-1 [Amended]

§ 3564.1 [Amended]

58. 43 CFR 3563.1-1 and 3564.1 are amended by the deletion of "coal,".

§ 3564.6 [Amended]

59. 43 CFR 3564.6 is amended by the deletion of "coal in Part 211 and to".

60. The second sentence of 43 CFR 3564.6 is amended to read, "Leases for minerals subject to this subpart not listed in the preceding sentence will be governed by the operating regulations in 30 CFR Part 231.

§ 3565.0-3 [Amended]

61. 43 CFR 3565.0-3 is amended by the deletion of "coal,".

§ 3566.2 [Amended]

62. In 43 CFR 3566.2, "30 CFR Part 211" is amended to read "30 CFR 231".

§ 3568.2-2 [Amended]

63. 43 CFR 3568.2-2 is amended by the deletion of "coal,".

Cecil D. Andrus,
Secretary of the Interior.

July 16, 1979.

[FR Doc. 79-22325 Filed 7-18-79; 8:45 am]

☆ U.S. Government Printing Office: 1980-O-678-735/443

Legal Library

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
79 SEP 27 AM 10:00
RECEIVED
MONTANA STATE OFFICE
BILLINGS, MONTANA

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2740 and 2910

[Circular No. 2450]

Land Resource Management (2000); Recreation and Public Purposes Act

Under the authority of the Recreation and Public Purposes Act, as amended, (43 U.S.C. 865 et seq.), Parts 2740 and 2910, Groups 2700 and 2900, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations are revised as set forth below.

1. Part 2740 is revised to read as follows:

PART 2740—RECREATION AND PUBLIC PURPOSES ACT

Subpart 2740—Recreation and Public Purposes Act: General

Sec.
2740.0–1 Purpose.
2740.0–2 Objective.
2740.0–3 Authority.
2740.0–5 Definitions.
2740.0–6 Policy.
2740.0–7 Cross reference.

Subpart 2741—Recreation and Public Purposes Act: Requirements

Sec.
2741.1 Lands subject to disposition.
2741.2 Qualified applicants.
2741.3 Applications.
2741.4 Guidelines for conveyances and leases under the act.
2741.5 Applications for transfer of title or change of use.
2741.6 Acreage limitations and general conditions.
2741.7 Price.
2741.8 Patent provisions.

Authority: Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.).

Subpart 2740—Recreation and Public Purposes Act: General

§ 2740.0–1 Purpose.

These regulations provide guidelines and procedures for transfer of certain public lands under the Recreation and Public Purposes Act as amended (43 U.S.C. 869 et seq.), to States or their political subdivisions, and to nonprofit corporations and associations, for recreational and public purposes.

§ 2740.0–2 Objective.

The objective is to meet the needs of certain State and local governmental agencies and other qualified organizations for public lands required for recreational and public purposes.

§ 2740.0–3 Authority.

(a) The Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.), commonly known as the Recreation and Public Purposes Act, authorizes the Secretary of the Interior to lease or convey public lands for recreational and public purposes under specified conditions.

(b) Section 211 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1721), authorizes the Secretary of the Interior to convey to States or their political subdivisions unsurveyed islands determined by the Secretary to be public lands of the United States and "omitted lands" under the Recreation and Public Purposes Act without regard to acreage limitations contained in the Act.

§ 2740.0–5 Definitions.

As used in this part, the term:

(a) "Act" means the Recreation and Public Purposes Act as amended by section 212 of the Federal Land Policy and Management Act of 1976.

(b) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this part.

(c) "Public lands" means any lands and interest in lands administered by the Bureau of Land Management, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts and Eskimos.

§ 2470.0–6 Policy.

(a) To assure development of public lands in accordance with a development plan and compliance with an approved management plan, the authorized officer may require that public lands first be leased under the provisions of subpart 2912 of this title for a period of time prior to issuance of a patent.

(b) Municipal corporations may not secure public lands under this act which are not within convenient access to the municipality and within the same State as the municipality. Other qualified governmental applicants may not secure public lands outside their political boundaries or other area of jurisdiction.

§ 2740.0–7 Cross references.

(a) Requirements and procedures for conveyance of land under the Recreation and Public Purposes Act are contained in Subpart 2741 of this chapter.

(b) Requirements and procedures for leasing of land under the Recreation and Public Purposes Act are contained in Subpart 2912 of this title.

(c) Requirements and procedures for conveyance of unsurveyed islands and omitted lands under Section 211 of the Federal Land Policy and Management Act are contained in Subpart 2742 of this chapter.

Subpart 2741—Recreation and Public Purposes Act: Requirements

§ 2741.1 Lands subject to disposition.

(a) The act is applicable to any public lands except (1) lands withdrawn or reserved for national forests, national parks and monuments, and national wildlife refuges, (2) Indian lands and lands set aside or held for use by or for the benefit of Indians, Aleuts and Eskimos, and (3) lands which have been acquired for specific purposes.

(b) Revested Oregon and California Railroad grant lands and reconveyed Coos Bay Wagon Road grant lands may only be leased to States and counties and to State and Federal instrumentalities and political subdivisions and to municipal corporations.

(c) Section 211 of the Federal Land Policy and Management Act of 1976 does not apply to public lands within the National Forest System, defined in the Act of August 17, 1974 (16 U.S.C. 1601), the National Park System, the National Wildlife Refuge System and the National Wild and Scenic Rivers System.

§ 2741.2 Qualified applicants.

Applications for any recreational or public purpose may be filed by States, Federal and State instrumentalities and political subdivisions, including counties and municipalities, and nonprofit associations and nonprofit corporations that, by their articles of incorporation or other authority, are authorized to acquire land.

Published in 44 F.R. 43470, July 25, 1979 - Effective August 24, 1979

Circular Distribution List

§ 2741.3 Applications.

(a) Applications shall be submitted on forms approved by the Director, Bureau of Land Management.

(b) Each application shall be accompanied by three copies of a statement describing the proposed use of the land. The statement shall show that there is an established or definitely proposed project for such use of the land, present detailed plan and schedule for development of the project and a management plan which includes a description of how any revenues will be used. The provisions of § 1821.2 of this title apply to filings pursuant to this section.

§ 2741.4 Guidelines for conveyances and leases under the act.

(a) Public lands shall be conveyed or leased under the act only for an established or definitely proposed project for which there is a reasonable timetable of development and satisfactory development and management plans.

(b) No public lands having national significance shall be conveyed pursuant to the act.

(c) No more public lands than are reasonably necessary for the proposed use shall be conveyed pursuant to the act.

(d) For proposals involving over 640 acres, public lands shall not be sold or leased pursuant to this act until:

(i) Comprehensive land use plans and zoning regulations for the area in which the lands are located have been adopted by the appropriate State or local authorities.

(ii) The authorized officer has held at least one public meeting on the proposal.

(e) Applications shall not be approved unless and until it has been determined that disposal under the act would serve the national interest following the planning requirements of section 202 of the Federal Land Policy and Management Act (43 U.S.C. 1712).

(f) Public lands may be determined to be suitable for lease or sale under the act by the authorized officer on his own motion as a result of demonstrated public needs for public lands for recreational or public purposes during the planning process described in section 202 of the Federal Land Policy and Management Act. Potential applicants should contact the authorized officer and furnish him with conceptual plans of the proposed use early in the planning process so that he can plan for the proposed use of the public lands.

(g) lands under the jurisdiction of another agency shall not be determined to be suitable for lease or sale without that agency's approval.

(h) the issuance of a notice that public lands are suitable for sale or lease under the act and are classified as such shall segregate such public lands from all other appropriations, including locations under the mining laws, except as provided in the notice of an amendment thereof. If no application is filed within 18 months after issuance of the notice, the segregation shall be automatically vacated and the public lands restored to their former status.

(i) Patents shall not be issued for sanitary landfill sites, unless it can be shown that when the usefulness of the lands for landfill purposes ends, the land shall be used for recreation or other public purposes as provided in the approved development plan. The land shall be leased until the sanitary landfill has been filled and the subsequent development has been completed.

(j) The act shall not be used to provide sites for the disposal of permanent or long-term hazardous wastes.

§ 2741.5 Applications for transfer or change of use.

(a) Applications under the act for permission to add to or change the use specified in a patent or applications to transfer title to a third party shall be filed as prescribed in § 2741.3 of this title.

(b) Applications for transfer of title are subject to the acreage limitations as prescribed in § 2741.6(a) of this title.

(c) Prior to approval of an application filed under this section, the public lands may be reappraised in accordance with § 2741.7 of this title and the beneficiary required to make such payments as are found justified by the reappraisal.

2741.6 Acreage limitations and general conditions.

(a) Conveyances under the act to any applicant in any one calendar year shall be limited as follows:

(1) Any State or State agency having jurisdiction over the State park system may acquire not more than 6,400 acres for recreational purposes and such additional acreage as may be needed for small roadside parks and rest sites of 10 acres or less each.

(2) Any State or agency or instrumentality of such State may acquire not more than 640 acres for each of its programs involving public purposes other than recreation.

(3) Any politicial subdivision of a State may acquire for recreational purposes not more than 6,400 acres, and for public purposes other than recreation an additional 640 acres. In addition, any political subdivision of a State may acquire such additional acreage as may be needed for roadside parks and rest sites of not more than 10 acres each.

(4) If a State or political subdivision has failed in any one calendar year to receive 6,400 acres (not counting public lands for small roadside parks and rest sites) and had an application on file on the last day of that year, the State, State park agency or political subdivision may receive additional public lands to the extent that the conveyances would not have exceeded the limitations for that year.

(5) Any nonprofit corporation or nonprofit association may acquire for recreational purposes not more than 640 acres and for public purposes other than recreation an additional 640 acres.

(6) Acreage limitations described in this section do not apply to conveyances made under section 211 of the Federal Land Policy and Management Act of 1976.

(b) Conveyances within any State shall not exceed 25,600 acres for recreational purposes per calendar year, except that should any State park agency or political subdivision fail in one calendar year to receive 6,400 acres other than small roadside parks and rest sites, additional conveyances may be made thereafter to that State park agency or political subdivision pursuant to any application on file on the last day of said year to the extent that the conveyances would not have exceeded the limitations of said year.

(c) No patents shall be issued under the act unless and until the public lands are officially surveyed. This requirement does not apply to islands patented under the authority of section 211(a) of the Federal Land Policy and Management Act of 1976.

(d) All leases and patents issued under the act shall reserve to the United States all minerals together with the right to mine and remove the same under applicable laws and regulations to be established by the Secretary of the Interior.

§ 2741.7 Price.

(a) Conveyances for recreational or historic-monument purposes to a State, county, or other State or Federal instrumentality or political subdivision shall be issued without monetary consideration.

(b) All other conveyances shall be made at prices established by the Secretary of the Interior through appraisal or otherwise, taking into consideration the purpose for which the land is to be used.

(c) Patents shall be issued only after payment of the full purchase price by a patent applicant.

§ 2741.8 Patent provisions.

(a) All patents under the act shall

provide that title shall revert upon a finding, after notice and opportunity for a hearing, that, without the approval of the authorized officer:

(i) The patentee or its approved successor attempts to transfer title to or control over the lands to another;

(ii) The lands have been devoted to a use other than that for which the lands were conveyed;

(iii) The lands have not been used for the purpose for which they were conveyed for a 5-year period; or

(iv) The patentee has failed to follow the approved development plan or management plan.

(b) Patents shall also provide that the Secretary of the Interior may take action to revest title in the United States if the patentee directly or indirectly permits his agents, employees, contractors, or subcontractors (including without limitation lessees, sublessees, and permittees) to prohibit or restrict the use of any part of the patented lands or any of the facilities thereon by any person because of such person's race, creed, color, sex or national origin.

PART 2910—LEASES

2. Subpart 2912 is revised to read as follows:

Subpart 2912—Recreation and Public Purposes Act

Sec.
2912.0-7 Cross reference.
2912.1 Nature of Interest.
2912.1-1 Terms and conditions of lease.
2912.2 Renewal of leases.
2912.3 Substitution of new lease.
2912.4 Leases for solid waste disposal sites.
2912.4-1 Requirement.
2912.4-2 Procedures.

Authority: Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.)

Subpart 2912—Recreation and Public Purposes Act

§ 2912.0-7 Cross reference.

The general requirements and procedures under the Recreation and Public Purposes Act are contained in part 2740 of this title.

§ 2912.1 Nature of interest.

§ 2912.1-1 Terms and conditions of lease.

(a) The term of leases under the Recreation and Public Purposes Act, hereafter referred to as "the Act," shall be fixed by the authorized officer but shall not exceed 20 years for nonprofit associations and nonprofit corporations, and 25 years for Federal, State, and local governmental entities. A lease may contain, at the discretion of the authorized officer, a provision giving the lessee the privilege of renewing the lease for a like period.

(b) Leases shall be issued on a form approved by the Director, Bureau of Land Management and shall contain terms and conditions required by law, and public policy, and which the authorized officer considers necessary for the proper development of the land, for the protection of Federal property, and for the protection of the public interest.

(c) Leases shall be terminable by the authorized officer upon failure of the lessee to comply with the terms of the lease, upon a finding, after notice and opportunity for hearing, that all or part of the land is being devoted to a use other than the use authorized by the lease, or upon a finding that the land has not been used by the lessee for the purpose specified in the lease for any consecutive period specified by the authorized officer. The specified period of non-use or unauthorized use shall not be less than 2 years nor more than 5 years.

(d) Reasonable annual rentals shall be established by the Secretary of the Interior and shall be payable in advance. Upon notification of the amount of the yearly rental, a lease applicant shall be required to pay at least the first year's rental before the lease shall be issued. Upon the voluntary relinquishment of a lease before the expiration of its term, any rental paid for the unexpired portion of the term shall be returned to the lessee upon a proper application for repayment to the extent that the amount paid covers a full lease year or years of the remainder of the term of the original lease. Leases for recreational or historic-monument purposes to a State, county or other State or Federal instrumentality or political subdivision shall be issued without monetary consideration.

(e) Leases are not transferable except with the consent of the authorized officer. Transferees shall have all the qualifications of applicants under the Act and shall be subject to all the terms and conditions of the regulations in this part.

(f) A lessee shall not be permitted to cut timber from the leased lands without prior permission from the authorized officer.

(g) All leases shall reserve to the United States all minerals together with the right to mine and remove the same under applicable laws and regulations to be established by the Secretary of the Interior.

§ 2912.2 Renewal of leases.

A lessee with a privilege of renewal must notify the authorized officer at least 180 days before the end of the lease period that it will exercise the privilege.

§ 2912.3 Substitution of a new lease.

A lessee may apply for a new lease at any time. Applications for new leases shall be accompanied by consent of the lessee to cancellation of the existing lease upon the issuance of the new lease and by three copies of a statement showing (a) the need for a new lease and (b) any changes in the use or management of the lands or the terms and conditions of the lease which the applicant desires.

§ 2912.4 Leases for solid waste disposal sites.

§ 2912.4-1 Requirement.

Compliance with *Guidelines for the Thermal Processing of Solid Wastes* (40 CFR Part 240). *Guidelines for the Land Disposal of Solid Waste* (40 CFR Part 241), and *Regulations for the Acceptance of Certain Pesticides and Recommended Procedures for the Disposal and Storage of Pesticides and Pesticide Containers* (40 CFR Part 165), and any other regulations or guidelines promulgated pursuant to the Resource Conservation and Recovery Act of 1976 (43 U.S.C. Chapter 82) is required under leases issued for purposes involving disposal of solid waste.

§ 2912.4-2 Procedures.

(a) All new leases shall contain stipulations requiring compliance with the above-referenced regulations and guidelines. Leases and respective plans of development and management already in existence without such specific stipulations shall be amended to require compliance with the above guidelines be lessees. In all cases, the lease must stipulate that failure to comply with the regulations and guidelines shall constitute sufficient grounds for cancellation of the lease.

(b) Lease applications shall include in the plan of development and management detailed description of the methods and procedures that will be employed to achieve compliance with the above regulations and guidelines. The regulations and guidelines delineate minimum standards of performance that must be followed. The recommended methods and procedures in the guidelines are means whereby the requirements may be met. Alternate methods and procedures may be used in meeting the requirements when approved by the authorized officer.

Guy R. Martin,
Assistant Secretary of the Interior.
July 19, 1979.

[FR Doc. 79-22923 Filed 7-24-79; 8:45 am]